

Choosing the Sex of the Foetus: A Jurisprudential Study A Jurisprudential Study

اختيار جنس الجنين دراسة فقهية.

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Abstract :

This research addresses a jurisprudential issue that has not previously arisen in the history of Islamic jurisprudence due to scientific advances that have revealed knowledge and theories that were previously unknown. One such contemporary issue is medical intervention in determining the sex of the foetus. Contemporary scholars have differing opinions on the ruling regarding this matter, with some permitting it and others prohibiting it. This study outlines the perspectives of both groups, as well as the researcher's own views on the matter. May God guide us to the right path.

Keywords: foetus, choice, gender, sperm, egg.

ملخص:

تناول هذا البحث نازلة فقهية لم يسبق لها الوقوع في تاريخ الفقه الإسلامي، وذلك لما وصل إليه العلم الحديث من معارف ونظريات كانت مجهولة في السابق، ومن هذه القضايا والنوازل المعاصرة التدخل الطبي في تحديد جنس الجنين ذكرا أو أنثى، وقد اختلف الفقهاء المعاصرون في حكم ذلك بين مجيز ومانع، وفي هذا البحث بيان لاتجاه هذين الفريقين في هذه المسألة، مع ما يراه الباحث أقرب إلى الصواب فيها، والله الموفق إلى سواء السبيل.

الكلمات المفتاحية: الجنين، اختيار، جنس، نطفة، بويضة.

Introduction:

All praise is due to Allah, the Lord of the Worlds. Peace and blessings be upon the Messenger, a mercy to all mankind. To continue: It is by the wisdom of Allah the Almighty that humanity consists of two genders, male and female, and that human life cannot be complete or established without both. For other wise reasons, Allah Almighty prevents some people from having children while granting them to others, creating some as females and others as males. To Allah belongs the dominion of the heavens and the earth. He creates what He wills. He gives females to whom He wills, males to whom He wills, or couples males

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and females, making whom He wills barren.” Indeed, He is Knowing and Competent.’ [Ash-Shura: 49-50].

Moreover, Allah’s creation has led some of His beings to lean towards one gender or the other; some prefer males, while others prefer females, each according to their own reasons.

In our time, doctors have invented modern methods to determine the sex of the foetus, and many people have rushed to adopt these methods according to their desires. Therefore, there is an urgent need to study this issue from a religious perspective, to clarify the ambiguities surrounding it and establish controls and guidelines. This paper aims to provide insights and reflections that may clarify or resolve this problematic issue. May Allah grant success; there is no deity but Him.

Problems with the topic:

The aim of this research is to answer the following questions:

1. What does it mean to choose the sex of the foetus?
2. What is its status in Islamic law?
3. What restrictions and guidelines must be followed if it is permissible?

Previous studies:

I have come across various studies and pieces of research related to this topic, including:

1. Choosing the Sex of the Fetus: A Jurisprudential and Medical Study by Dr Abdul Rashid Qasim, Al-Asadi Library, Mecca, 2nd edition, 1424 AH – 2003 CE;
2. A Legal Perspective on Determining the Sex of the Fetus.
3. Choosing the Sex of the Foetus from a Legal Perspective.
4. Proceedings and Research of the Eighteenth Session of the Islamic Fiqh Academy, held in Mecca from 10–14 March 2006 (1427 AH).
 - ‘Choosing the Sex of the Foetus’ (Methods of Controlling the Sex of the Foetus, Their Success Rates, and Their Legal Ruling) by Dr Mohammad bin Ali Al-Bar.
 - ‘Determining the Sex of the Fetus’ by Prof. Dr. Muhammad bin Yahya Al-Najimi.
 - ‘Determining the Sex of the Fetus’ by Dr Abdullah Hussein Basalama.
 - ‘Determining the Sex of the Fetus’ by Dr Abdul Nasser bin Musa Abu Al-Basal.

- 'Determining the Sex of the Fetus' by Dr. Najm Abdul Wahid.

I have not reviewed the first study, but I have examined the others and found them beneficial, particularly with regard to the evidence relating to the issue and the discussions surrounding it.

Methodology of the research:

When preparing this research paper, I adopted the following methodology:

1. I collected material for this paper from various sources, including the writings of earlier jurists, and supplemented this with studies by contemporary specialists.
2. I took an inductive approach to gather texts and evidence from jurists and an analytical approach to compare and study these opinions, highlighting the strongest and critiquing the weaker ones.
3. I documented and attributed legal rulings to their sources in recognised legal texts.
4. I defined some of the key terms relevant to the research.
5. I cited the hadiths mentioned in the research from their original sources.
6. I concluded the paper with a bibliography of the sources and references consulted when preparing this research paper.

Research plan:

I structured the research into an introduction, two main sections and a conclusion.

Section One: The Meaning of Choosing the Sex of the Foetus and Methods of Selection.

Subsection One: The Essence of Choosing the Sex of the Fetus.

Subsection 2: Methods for choosing the sex of the foetus.

Section Two: The Ruling on Choosing the Sex of the Foetus and Its Guidelines.

- Subsection One: The Ruling on Choosing the Sex of the Fetus.

- Subsection 2: Guidelines for choosing the sex of the foetus.

Section One: The Significance of Selecting the Sex of the Foetus and Methods of Selection

Subsection One: The Essence of Choosing the Sex of the Foetus

This refers to human intervention using modern methods to achieve a desired pregnancy, whether male or female.

Medical scientists have more accurately identified the causes of male and female differentiation in human embryos. A woman's egg is said to carry an X chromosome, while a man's sperm carries both X and Y chromosomes. If the egg is fertilised by an X chromosome, the newborn will be female; if it is fertilised by a Y chromosome, the newborn will be male.

Upon discovering this mechanism, scientists moved to the next phase, claiming to be able to select the sex of the foetus through in vitro fertilisation using one of the man's chromosomes (X or Y). Those wishing for a boy would use sperm carrying the Y chromosome, while those wanting a girl would use sperm carrying the X chromosome. They claim that the success rate of fertilisation and implantation is around 25%, rising to 99% if fertilisation and implantation occur.

Section Two: Methods for Selecting the Sex of the Foetus

The consideration of methods for selecting the sex of the foetus is not a new phenomenon; people have been concerned with it for a long time. Various methods with different success rates for selecting the sex of the foetus have been suggested, including:

1. Timing of intercourse: Also known as the Shettles method, this approach involves having intercourse at a specific time when one gender is desired over the other. This is based on the differences in characteristics between male and female sperm. Research has revealed that male sperm are lighter, faster and have a shorter lifespan than female sperm, which are heavier, slower and live longer. Therefore, timing intercourse appropriately can favour the desired gender. For example, if intercourse occurs immediately after ovulation, the chances of conceiving a male are higher, and vice versa. Combining advanced methods with precise timing of ovulation and intercourse may increase the success rate of achieving the desired gender (Al-Muslih, K. (n.d.), p. 10, Al-Miman, N. A. (2006) p. 71).

2. Dietary Restrictions or Nutrition:

This method involves consuming specific foods to create the right conditions for fertilisation with the desired sex by increasing certain substances in the uterus and decreasing others. A proposed dietary programme can be followed to achieve this (Al-Muslih, K. (n.d.), p. 10, Al-Miman, N. A. (2006) p. 71).

3. Use of appropriate vaginal chemical douches:

This theory suggests that an acidic environment is more conducive to female sperm, while a basic environment favours male sperm. Some women use acidic or alkaline vaginal douches to prepare the uterus with the appropriate chemical environment for the desired sex (Al-Muslih, K. (n.d.), p. 10, Al-Miman, N. A. (2006) p. 71).

4. The Chinese Gender Chart and Mathematical Methods:

The Chinese Gender Chart uses a complex method based on astronomical hypotheses lacking scientific foundation to attempt to find an astronomical relationship between the foetus's gender, the mother's age, the foetus's age, and the month of conception (Al-Muslih, K. (n.d.), p. 24). Similarly, a mathematical method involves adding together the number of letters in the mother's name and her mother's name, and then adding the number of days in the month of conception and the number of days in the month of delivery (Al-Muslih, K. (n.d.), p. 24). If the result is odd, a boy is expected; if even, a girl. This method is widely regarded as impermissible due to its reliance on superstitious beliefs and the practices of astrologers and soothsayers who claim to have knowledge of the unseen (Al-Muslih, K. (n.d.), p. 24). Furthermore, these methods attribute causes that have no basis in religious or divine decree. The Permanent Committee for Scholarly Research and Ifta in Saudi Arabia has issued a fatwa stating that using the Chinese Gender Chart to determine the gender of a foetus is false and invalid as it involves claiming knowledge of the unseen, which only Allah knows. It is therefore recommended that this chart is discarded and not circulated among people (Fatwa No. (21820), dated 22/1/1422 AH).

5. Artificial Insemination or In Vitro Fertilisation (IVF): These methods aim to fertilise the egg with sperm carrying the desired sex after separating them through various means. Several techniques are used to separate sperm in order to obtain the desired gender, including screening, centrifugation, and exploiting differences in electrical charges. However, these methods have not yielded satisfactory results, prompting researchers to seek more precise and effective techniques. Ongoing studies are aiming for higher accuracy and scientists have turned to separating sperm based on genetic material (DNA) content. This process has evolved to include embryo separation, one of the most successful methods identified for determining the gender of the foetus.

Following successful separation, fertilisation can occur through artificial insemination or IVF. The artificial insemination process involves monitoring ovulation and then injecting sperm into the uterus at the time of ovulation. The pregnancy rate is about 25%, and there is an 80% chance of the foetus being the desired gender. The IVF method is more precise. It involves monitoring ovulation and retrieving eggs from the woman's body through the vagina (without surgery). These eggs are then fertilised with separated sperm. On the third day after fertilisation, a cell from each fertilised egg is tested to determine its sex, before only the desired embryos are reintroduced into the uterus. This method has a 50% pregnancy rate and a greater than 99% chance of achieving the desired gender (Al-Baz, A. A. (2001) 2/859-861, Al-Muslih, K. (n.d.), p. 26).

Despite the variety of these methods, scholars have discussed their real implications and legal rulings regarding artificial insemination and IVF. The Islamic Fiqh Academy has issued a decision permitting the following two scenarios:

1. A sperm sample from the husband and an egg from the wife are taken, fertilised externally and then implanted in the wife's uterus.

2. The husband's sperm is injected into the appropriate location in the wife's vagina or uterus for internal fertilisation.

The council's decision regarding these two scenarios states: 'The Academy sees no harm in resorting to these methods when necessary, emphasising the importance of taking all necessary precautions.' (Islamic Fiqh Academy, 1986, pp. 74–76) These two methods are the focus of the discussion on choosing the sex of the foetus, excluding others.

Section Two: The Ruling on Selecting the Sex of the Foetus and its Guidelines

Subsection One: The Ruling on Selecting the Sex of the Foetus

Scholars generally hold two views on the choice of the fetus's sex:

- 1. First view:** Choosing the sex of the foetus is permissible under Islamic law (Al-Natsha, M. A. J. (2001) 1/228, Qasim, A. R. (2003) p. 68-72), Al-Miman, N. A. (2006) p. 71). Prominent proponents of this view include Abdullah Al-Bassam, Mostafa Al-Zarqa, Yocef Al-Qaradawi, Abdullah bin Bayyah, Nasr Farid (Al-Natsha, M. A. J. (2001) 1/228, Qasim, A. R. (2003) p. 68-72), Al-Miman, N. A. (2006) p. 71) and Ali Gomaa Others (Al-Muslih, K. (n.d.), p. 10).

This position is also supported by the Fatwa Council in Jordan (Al-Muslih, K. (n.d.), p. 10) and the Fatwa Committee of the Ministry of Awqaf in Kuwait (Qasim, A. R. (2003) p. 72).

- 2. Second View:** Choosing the sex of the foetus is impermissible. Notable scholars who advocate this position include Muhammad Al-Natsha (Al-Natsha, M. A. J. (2001) 1/232, 234), Abdul Nasser Abu Al-Basal and Faisal Mawlawi (Qasim, A. R. (2003) (pp. 72-73). This view aligns with the fatwa from the Permanent Committee for Scholarly Research and Ifta in Saudi Arabia, which states: 'The matter of embryos, concerning their existence in the womb and their male or female nature, is part of the knowledge of the unseen, which only Allah, the Exalted, knows. (Qasim, A. R. (2003) (p. 74).

Evidence for the opinions:

Evidence for the first opinion:

The permissibility of choosing the sex of the foetus is supported by several pieces of evidence, including:

- 1. The Hadith of Thawban:** When a Jewish man asked the Prophet Muhammad (peace be upon him) about children, he responded: 'The man's water is white and the woman's water is yellow. If the man's water prevails over the woman's, the child will be male by the permission of Allah. If the woman's water prevails over the man's, the child will be female by the permission of Allah' (Muslim, A. H. A. (n.d.), No. (315).

Point of Evidence: The Prophet clarified the natural reason for male or female birth by the will of Allah, indicating that the differentiation of gender in the foetus relies on a known natural cause, similar to other natural causes. Whenever this is possible, the premise leading to the conclusion can be accessed (Al-Muslih, K. (n.d.), p. 10).

This evidence has been contested on the basis that the differentiation between male and female does not stem from natural causes, but from the will of the Creator. Allah has attributed this solely to His will. "To Allah belongs the dominion of the heavens and the earth. He creates what He wills." He gives females to whom He wills, and gives males to whom He wills... [Ash-Shura: 49–50].

The Hadith of Ibn Mas'ud also mentions the stages of human creation, during which the angel asks: "O Lord, is it male or female?" Your Lord then decrees what He wills and the angel writes it down (Muslim, A. H. A. (n.d.), No. (2645).

Ibn Al-Qayyim commented: 'Do you not see how he attributed male and female to mere will and linked it to things that have no effect in nature, such as happiness, misfortune, sustenance and lifespan, without the angel addressing things that nature influences? (Ibn Qayyim al-Jawziyya, M. A. B. I. (n.d.) (1/259).

Ibn Al-Qayyim also supported the view that male and female differentiation is not a natural cause, stating: 'If one asks, "What is the cause of male and female?" We respond that its cause is the will of the acting Lord, not a natural cause. Everything the naturalists have said about reproduction is refuted, such as the idea of the man's heat and moisture...' (Ibn Qayyim al-Jawziyya, A. A. M. (2008) p. 340).

However, he later acknowledged objections based on Thawban's Hadith, stating: 'With all this, it is a partial cause, not an obligatory one. The obligatory cause is the will of Allah, which may produce the opposite result and negate its implications without contradicting His wisdom.' (Ibn Qayyim al-Jawziyya, A. A. M. I (2008) p. 343)

He further confirmed that, though it does not negate the existence of a cause, the association with the will indicates its causality by reason and text when it is known that something is a cause.

In summary, while Thawban's Hadith suggests a natural basis for differentiation, Ibn Al-Qayyim emphasised that divine will ultimately governs the matter (Ibn Qayyim al-Jawziyya, M. A. B. I. (n.d.) p. 186).

These objections can be countered in several ways: (Al-Muslih, K. (n.d.), p. 11)

- a. The Will of Allah and Causes: The fact that male and female differentiation occurs by the will of Allah does not contradict the pursuit of causes, as discussed by Ibn Al-Qayyim.
- b. Nature of causes: The denial of the existence of causes for male and female differentiation is primarily associated with the naturalist view that these causes are inherently effective. This was previously addressed in Ibn Al-Qayyim's work.

c. The weakness of the correlation argument: The argument based on Ibn Mas'ud's hadith that all occurrences are purely by the will of Allah is a correlation argument, which scholars of fundamentals consider to be weak (Al-Bukhari, A. A. A. (n.d.) (2/261), Al-Zarkashi, B. A. D. M. B. A. (1993) (8/109), Al-Mardawi, A. S. A. (2000) (5/2457). Happiness, misfortune, sustenance and lifespan all occur due to causes. The fact that these phenomena only manifest after birth does not imply that they are all equal in terms of the timing or conditions of their causes. Male and female differentiation occurs beforehand, whereas the others do not. Thus, the timing of what Allah has decreed regarding these causes is essential (Al-Muslih, K. (n.d.), p. 11).

2. The Principle of Permissibility: The default ruling for all matters is permissibility until evidence of prohibition is established, according to the majority of scholars (Al-Jassas, A. I. A. A. (1994) (3/252), Al-Razi, F. A. D. (1997) (6/97), Ibn Rajab al-Hanbali, A. R. A. (2001) 2/166: "Some have reported consensus on this."). Therefore, the original ruling remains in place unless evidence emerges to prevent its continuation (Al-Muslih, K. (n.d.), (p. 7).

3. Choosing the Sex of the Foetus as a Permissible Cause: The choice of the foetus's sex is a permissible cause, similar to praying for its attainment. If it is permissible to ask for something, then it is permissible to try to achieve it (Al-Muslih, K. (n.d.), (p. 8).

1.4 Comparison to infertility treatment: Scholars are in consensus that seeking treatment for infertility is permissible, even though it involves efforts to create a pregnancy and pursue the means for its occurrence. Allah is described as being able to render individuals infertile: ("Or He couples them, males and females, and makes whom He wills barren...") [Ash-Shura: 50]. This is similar to His statement about creating whatever He wills. Allowing the pursuit of methods to determine the sex of the foetus is even more justified, as it involves utilising available means to achieve a desired characteristic in the foetus. This is less complex than seeking the means of creation and formation (Al-Muslih, K. (n.d.), (p. 11).

Evidence for the second opinion:

1.1 Dispute over divine knowledge: Selecting the sex of the foetus challenges Allah's exclusive knowledge of what is in the womb. As Allah says in Aali Imran: 6: "He is the One who forms you in the wombs as He wills; there is no deity except Him, the Exalted in Might, the Wise." He also states, 'Allah knows what every female carries, what the wombs decrease and what they increase, and everything with Him is by measure' [Ar-Ra'd: 8]. Furthermore, Allah says: ('Indeed, Allah has knowledge of the Hour, and He sends down the rain, and knows what is in the wombs...') [Luqman: 34]. Many interpreters have indicated that no one knows whether a child will be male or female, or what their colour or features will be (Al-Tabari, M. J. A. (2000) (3/169), (21/88), Al-Jassas, A. I. A. A. (1985) (5/60), Al-Suyuti, J. A. R. (1993) (2/144).

Response: The choice of the foetus's sex does not contradict Allah's exclusive knowledge of what is in the womb, since choosing is not claiming knowledge of the unseen. The foetus has not yet come into existence; therefore, it cannot be said that this is a claim to knowledge of what is in the womb. Rather, it

is a means of obtaining a natural cause that may or may not occur, just like any other natural cause. Some researchers have attempted to reconcile these views, but, as previously discussed, this perspective is flawed.

2. Dispute over divine sovereignty:

Selecting the sex of a foetus challenges Allah's sovereignty and will over His creation.

Response: Seeking to achieve certain outcomes, whether in choosing the sex of the foetus or otherwise, by using the means that Allah has made available does not entail a dispute with Allah's sovereignty over His creation. Everything a servant does is subject to Allah's decree and will. Causes do not act independently; everything occurs by Allah's will, as He states: "And you do not will except that Allah wills. Indeed, Allah is Knowing and Wise" [Al-Insan: 30].

3. Change in Allah's Creation: The act of choosing the sex of the foetus is seen as altering Allah's creation, which is an act of Satan. Allah says, 'And I will surely mislead them, inspire false desires in them, command them to slit the ears of animals and change Allah's creation...' [An-Nisa: 119]. Abdullah bin Mas'ud reported that the Prophet (peace be upon him) cursed those who alter Allah's creation (Al-Bukhari, No. (5931), and by Muslim, No. (2125).

Response: Choosing the sex of the foetus does not constitute changing Allah's creation, as this occurs before the foetus is formed. Change cannot be attributed to something that has not yet come into existence. If it does not yet exist, how can it be considered a change?

3. Consequences and risks of choosing the sex of the foetus:

Allowing the selection of the sex of the foetus could lead to several harms and risks, including:

- Disruption of human balance: This could upset the natural gender ratio established by Allah for reasons of wisdom and mercy, as many people may prefer male offspring.
- Opening the door to scientific manipulation: This poses a significant danger with potential negative consequences for humanity.
- Risk of mixing lineages: Some methods of choosing the sex of the foetus could result in the mixing of lineages, which is a major drawback of this process (Al-Natsha, M. A. J. (2001) (1/232).
- Exposure of the woman's private parts: Some methods may require a woman to reveal her private parts.

Response: The existence of harms in any action does not necessitate its prohibition unless the harms are predominant (Ibn 'Abd al-Salam, I. A. (1993) (2/54). Upon examination, however, it is evident that these harms are not intrinsically linked to the permissibility of choosing the sex of the foetus or to the

process itself. Rather, they may arise from misuse or unrelated factors. Imbalances in gender ratios are not a consequence of the ability to choose the sex of the foetus, but are attributable to other societal issues.

Concerns about scientific manipulation do not justify prohibiting responsible use aimed at achieving sound objectives; only harmful applications should be avoided. As for the issue of revealing private parts, this falls under necessity, and there is a consensus among scholars that it is permissible to expose the necessary parts in such cases Ibn Rajab al-Hanbali, A. R. A. (1996) (3/85).

4. Preference for One Gender Over Another:

Choosing the sex of the foetus could lead to a preference for one gender over the other, similar to the pre-Islamic practice of favouring males over females, which resulted in female infanticide (Al-Natsha, M. A. J. (2001) (1/234).

Response: In Islamic law, seeking a particular gender for a child is not inherently prohibited. Allah answered the prayers of certain prophets who asked for sons, as recounted in the supplications of Ibrahim and Zakariya: 'O my Lord, grant me a righteous son.' [As-Saffat: 100–101] and "Zakariya called to his Lord, saying, 'My Lord, grant me a pure offspring. Indeed, You are the All-Hearing'" [Aali Imran: 38]. Female infanticide and similar practices are unequivocally prohibited, as is anything related to them, such as abortion (Al-Muslih, K. (n.d.), (p. 18).

It seems to me — though only Allah has true knowledge — that the ruling on this matter requires consideration of several factors. Is choosing the sex of the foetus a claim to knowledge of the unseen, or is it a permissible cause? If it is a permissible cause, are the associated harms sufficient to render it forbidden?

As previously discussed, it has been established that the act of choosing does not equate to claiming knowledge of the unseen, and that it falls under permissible causes. Furthermore, any accompanying harm may be permissible due to necessity, similar to the allowance for exposing private parts for medical treatment.

Therefore, it seems that the original ruling on this matter is permissible.

Subsection Two: Guidelines for Choosing the Sex of the Foetus

The permissibility of choosing and determining the sex of the foetus mentioned previously must adhere to the following guidelines: (Al-Miman, N. A. (2006) (p. 80)

1. Necessity: The choice should only be made in cases of necessity or urgent need, and this necessity must be appropriately assessed.

2. Limited scope: this practice should be restricted to individual cases and not implemented as a general policy for the community. Specific authorities should not encourage it in a way that could lead to its widespread adoption.

3. Precautionary measures: Extreme precautions must be taken to ensure that each man's sperm is preserved separately and that there is no mixing. The procedure should be conducted in Muslim countries and centres that guarantee lineage preservation, rather than in non-Muslim countries where lineage concerns may be less significant.

4. Qualified practitioners: The procedure should only be performed by a trusted Muslim doctor who will not yield to parents' desires to control the sex of their child without first verifying a genuine need.

5. Acknowledgement of Divine Will: Most importantly, practitioners and parents must acknowledge that their actions are merely a means to an end, and that the ultimate decision regarding offspring lies with Allah, who controls it as He wills.

By adhering to these guidelines, the practice will remain limited to specific cases and potential negative outcomes will be minimised, with God's permission.

And Allah knows best. All praise is due to Him, the Lord of the Worlds. May peace and blessings be upon our Prophet Muhammad, his family and all his companions.

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