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المجلات الاكاديمية العراقية



الجزء الثالث: الأبحاث باللغات الأجنبية

Sex Selection Technology: A Comparative Legal Study

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Abstract

This article highlights regulation of sex selection technology under Iraqi law. The modern methods for choosing gender of offspring includes; sperm sorting performed before fertilization, and pre-implantation genetic diagnosis (PGD) after performing in vitro fertilization (IVF) and prior to embryos transferring. Sex selection could be done for various purposes; medical purpose to avoid passing genetic diseases and disorders to offspring, and non-medical purpose to fulfill personal or cultural desire of having a child of a particular sex. In Iraq, there is no direct law addresses uses of assisted reproductive technology (ART) in general and sex selection in particular although this technology has become available and practiced. This paper explores whether the current situation in Iraq would require enacting a special legislation in relation to sex selection technology, and form and extent of the legislation, as well as requirements

that should be met for carrying out sex selection. The article examines legislative provisions and principles pertaining fundamental human rights in Iraqi legal system relating to different techniques of sex selection, and regulations of sex selection in some western countries, as well as different arguments for and against sex selection technology, in order to provide a response about approach which should be adopted by Iraqi law in relation to sex selection. It will be argued that there is a need to regulate sex selection technology in Iraq, in order to obtain benefits of this technology and avoid bad practices of it. law should permit performing sex selection in certain circumstances.

Keywords: Sex Selection, Sperm Sorting, Pre-implantation Diagnosis, In Vitro Fertilization, Sex Ratio, Gender Discrimination

(تقنية اختيار جنس المولود: دراسة قانونية مقارنة)

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الملخص

يتناول هذا البحث قضية تنظيم تقنية اختيار جنس المولود في القانون العراقي. ولأجل ذلك فانه يستعرض مختلف الطرق الحديثة في تحديد واختيار جنس المولود, ومن ذلك طريقة فصل وانتقاء

الحيامن قبل التلقيح, وكذلك انتقاء الاجنة المرغوبة من خلال التشخيص الجيني بعد اجراء التلقيح وقبل الزرع. اختيار جنس المولود يمكن ان يكون لاغراض مختلفة, منها ما هو طبي لغرض تفادي انتقال الامراض الوراثية المرتبطة بجنس معين, ومنها ما هو غير طبي لاشباع رغبة شخصية او اجتماعية في الحصول على اطفال بجنس محدد مرغوب. ليس هنالك في العراق قانون ينظم مختلف استخدامات تكنولوجيا الانجاب المساعدة ومنها تقنية اختيار جنس المولود على الرغم من ان هذه التقنية اصبحت متاحة ومطبقة في الوقت الحاضر. هذه الدراسة تبحث فيما لو ان اصدار تشريع خاص بتقنية اختيار الجنس يعد امر ضروري, وشكل ونطاق التشريع المطلوب والمتطلبات الواجب توافرها لاختيار جنس المولود. وعليه فانه من الضروري البحث في النصوص التشريعية والمبادئ العامة المتعلقة بحقوق الانسان في القانون العراقي, واستعراض تنظيمات التقنية في بعض الدول الغربية, وكذلك الفرضيات والحجج الاساسية المطروحة فيما يتعلق بتقنية اختيار الجنس. الفرضية المطروحة في هذا البحث ان هنالك حاجة لتنظيم تقنية اختيار الجنس وذلك لاستحصال فوائدها وتفادي التطبيقات الضارة, والتنظيم ينبغي ان يسمح باجراء اختيار جنس المولود في اوضاع محدودة.

I: Introduction

Since the ancient ages, parents have been attempting to influence gender of their offspring. This could be for varied reasons, including personal or social preference of a particular gender or for religious or economic motivations. As an attempt to control gender of children, people resorted traditional methods such as following a special diet by consuming particular foods, using vaginal douches, and timing of intercourse in accordance to ovulation, in a favor of having a child of desired sex.⁽¹⁾ In

⁽¹⁾ The Parliamentary Office of Science and Technology, *Sex Selection*. London (2003), 1.

the current time, it has become possible to select sex of offspring with high accuracy by using the contemporary technique of in vitro fertilization and sex selection, which might be done prior to occurrence of gestation through identifying and selecting gender of embryos, then transferring an embryo of a desired sex into mother's uterus. Sex selection technique has advantages including the use of it for medical motivations to prevent passing genetic diseases from parents to offspring, as well as assisting to fulfill parents' wish of having a child of a particular gender. This technique, however, arises an enormous controversy from legal and ethical aspects, especially performing sex selection for non-medical motivation. Debate over sex selection is relating to human rights including the right of individuals in founding family and reproductive choice, equality principle, and right of children to life and to be born healthy not suffering from diseases.

Due to the significance of sex selection, some countries have enacted legislation in order to regulate sex selection and to control different practices of it. On the other hand, other countries including Iraq still keep silent about this issue, where there is no single regulation to address this issue or to determine allowed and prohibited practices of sex selection. Thus, this paper examines sex selection technique in Iraq, to provides legal responses about whether it should be available for parents to choose gender of their children, and if there is a need for regulating this technology, and form and extent of such regulation. The core argument of this study is that Iraqi law should take a step to regulate sex selection

technology, where this technique has become practiced in Iraq in absence of law. Especially general rules in Iraqi law may not be sufficient to provide appropriate legal response in this regard. Any regulation should take into account the fundamental human rights in Iraqi law, as well as considering needs and wishes of people in the society that are compatible with fundamental rights and legal principles of Iraqi law.

For that, this paper in part II provides outlined information of clinical aspects of sex selection technology including; methods and motivations of sex selection. Part III explores sex selection in Iraqi legal system as well as regulations of sex selection in some western countries. Part IV addresses main arguments in relation to sex selection that should be considered. Part V discusses options for regulation of sex selection in Iraq, and determines suitable model of regulation for sex selection, as well as presenting some recommendations for reforming Iraqi law. Finally, the paper ends with a conclusion summarizes the paper.

II: Overview of Sex Selection Technology

This part provides outlined background about sex selection technology. This includes setting out various methods of sex selection, and motivations for carrying out sex selection.

A: Sex Selection Methods

Technology of choosing gender of newborn could be done prior to conception through modern technology, and before an embryo is implanted into a woman's uterus.

First: - Sperm Sorting: Scientists could influence sex of an embryo before fertilizing ovum, through sperm sorting. Technique of sperm sorting assists in determining and selecting sperm bearing desired chromosome of the gender in order to conceive a child of preferred gender.⁽¹⁾ The process of this technique occurs prior to conception or fertilization, through detecting sex chromosomes within male reproductive cell. Where, each sperm contains either X chromosome or Y chromosome while each ovum contains only X chromosome. Sperm sorting process involves using a laser beam within a single sperm in order to identify fluorescent-dyed chromosomes,⁽²⁾ as X-chromosome contains 2.5% DNA more than Y-chromosome. So, it is possible to identify sex chromosomes; where X-chromosomes seem brighter and bigger under laser compared to Y-chromosomes.⁽³⁾ Basing on that, if an ovum gets fertilized by a sperm bearing X-chromosome, gender of embryo will be female, while fertilizing ovum by Y-chromosome bearing sperm will produce a male baby.⁽⁴⁾ The sperm sorting process is done by separating and distinguishing sperms that

⁽¹⁾ The World Health Organization, *Preventing Gender-Biased Sex Selection*, (2011),15.

⁽²⁾ Deidre C. Webb, "The Sex Selection Debates: A Comparative Study of Sex Selection Laws in the United States and the United Kingdom," *South Carolina Journal of International Law and Business* 10, no.1 (2013): 163,176.

⁽³⁾ Rashel E. Remaley, "The Original Sexist Sin: Regulating Preconception Sex Selection Technology," *Health Matrix* 10, (2000): 249, 254. Kelly M. Plummer, "Ending Parents Unlimited Power to Choose: Legislation is Necessary to Prohibit Parents Selection of Their Children Sex and Characteristics," *Saint Louis University Law Journal* 47, (2003): 517, 521.

⁽⁴⁾ WHO, *Preventing Gender-Biased Sex Selection*. 15.

carry X which is female chromosome and Y which is male chromosome. After that, physicians can select a sperm which carries chromosome which would produce desired gender for reproductive purpose.⁽¹⁾ After sorting sperms, the woman will undergo in vitro fertilization, combining reproductive cells at laboratory and embryo implantation, in attempt to get her pregnant with desirable or wanted embryo.⁽²⁾ This method of sex selection considers costlier and less effective in achieving the wanted result compared to PGD.⁽³⁾

Second: - Pre-Implantation Genetic Diagnosis: Sex selection could be performed after fertilization and prior transferring embryo, through Pre-implantation genetic diagnosis (PGD). Gender of embryos that are generated at laboratory using in vitro fertilization technique could be determined through pre-implantation genetic diagnosis PGD.⁽⁴⁾ This method of sex selection is achieved following to fertilization of reproductive cells outside of woman's body. Where, testing for identifying sex of the embryo is done once cells' division of fertilized ovum is at

⁽¹⁾ This technique is the most modern method of selecting gender of embryo, and it is available in the United States. Victorian Law Reform Commission, *Assisted Reproductive Technology and Adoption: Final Report*, Melbourne (February 2007): 80.

⁽²⁾ Susan M. Faust, "Comment: Baby Girl or baby Boy? Now You Can Choose: A Look at New Biology and no Law," *Albany Law Journal of Science & Technology* 10, (2000): 1, 4.

⁽³⁾ Ashley Bumgarner, "A Right to Choose?: Sex Selection in the International Context," *Duke Journal of Gender Law and Policy* 14, (2007): 1289,1294.

⁽⁴⁾ This technique was basically developed in Britain for detecting if embryos carry any disorders. Andrea Whittaker, "Media Debates and 'Ethical Publicity' on Social Sex Selection Through Preimplantation Diagnosis (PGD) Technology in Australia," *Culture, Health & Sexuality* 17, no.8 (2015): 962,964.

eight-cell phase.⁽¹⁾ Screening the embryos is carried out through removing a cell from the embryo after three days from fertilization, and analyzing DNA and chromosome to identify gender of embryo.⁽²⁾ Once a single or two cells are removed from the early embryo, a genetic analysis is carried out by scientists to identify desired and undesired genetic traits of embryos including the gender, whether male or female.⁽³⁾ Then, healthy wanted embryo with desirable characteristics is transferred and implanted into a woman's womb, so the embryo of preferred gender is transferred into the woman's womb.⁽⁴⁾ This method of sex selection is the most advanced and reliable, where the accuracy rate of it is high.⁽⁵⁾

B: Sex Selection Motivations

Choosing gender of human embryos could be done for varied reasons. Motivations for selecting sex of newborn could be classified into two groups; choosing gender of an embryo for medical reasons and for social reasons.

First: - Medical Reasons: Couple might resort sex selecting in order to avoid or reduce danger of passing serious genetic diseases to children, that

⁽¹⁾ Jodi Dance, "Sexism and 'the Superfluous Female': Arguments for Regulating Pre-Implantation Sex Selection," *Harvard Women's Law Journal* 18, (1995): 219,228.

⁽²⁾ WHO, *Preventing Gender-Biased Sex Selection*, 15.

⁽³⁾ M. Shelby Deeney, "Bioethical considerations of Preimplantation Genetic Diagnosis for Sex Selection," *Washington University Jurisprudence Review* 5, no.2 (2013): 333, 338.

⁽⁴⁾ Whittaker, 'Media Debates and 'Ethical Publicity' on Social Sex Selection,' 964.

⁽⁵⁾ Deeney, "Bioethical considerations of PGD for Sex Selection," 339.

may be linked or associated with a particular gender.⁽¹⁾ Where, most of genetic diseases linked to a particular gender, such as hemophilia, down syndrome and cystic fibrosis, so sex selection may assist in increasing possibility of conceiving a healthy fetus.⁽²⁾ Such genetic diseases affect mostly male gender, so parents in families who have a history of genetic disease, may prefer to have a girl baby, in order to ensure that their child will not suffer from such inherited disease.⁽³⁾

Second: - Social Reasons: Beside the medical motivation of sex selection, this technology could be utilized for several social motivations. Sex selection may be performed in order to ensure achieving the family balance, by choosing a gender that is opposite to existing gender of children in the family.⁽⁴⁾ In addition, gender selection might also be employed to fulfill a personal desire of parents or cultural preference of having a child of particular gender, which is mostly a male baby, for cultural and economic considerations.⁽⁵⁾ For instance, people in India prefer to have male offspring for securing their wealth and social status, especially sons in the history have responsibility to support their parents, while daughters will be after marriage part of their husband's families.⁽⁶⁾

⁽¹⁾ VLRC, *ART and Adoption*, 80.

⁽²⁾ Bumgarner, "A Right to Choose?: Sex Selection," 1291

⁽³⁾ The Parliamentary Office of Science and Technology, *Sex Selection*, London (July 2003), 1.

⁽⁴⁾ VLRC, *ART and Adoption*, 80.

⁽⁵⁾ VLRC, *ART and Adoption*, 80. Also, POST, *Sex Selection*, 1.

⁽⁶⁾ Bumgarner, "A Right to Choose?: Sex Selection," (2007), 1294.

III: Regulations of sex selection

This part considers the legal position of sex selection technology in Iraq and regulations in some western countries. Where, western Countries consider pioneers in the domain of ART, and have rich regulatory experience. This may provide a suitable proposal for regulating sex selection that could be adopted by Iraqi law. Setting out sex selection regulations includes exploring sex selection technology in light of legal principles in Iraqi law, as well as regulations of sex selection in Australia, New Zealand and Canada.

A: - Sex Selection in Iraq

Despite sex selection technology has become available for parents to choose and control gender of their offspring, there is no a single regulation in Iraq addresses expressly sex selection. But, there are some legal general principles and legislative provisions that could be considered in order to examine legal position of sex selection technology in Iraq.

In terms of fundamental human rights, there are some provisions related to human rights that could be considered for examining practices of sex selection technology. Firstly, family is entitled for the legal protection as it is the foundation of society,⁽¹⁾ and individuals of full age (marriageable age) have right to marry and found a family in a principal right and should be guaranteed and protected by the law.⁽²⁾ Further, individuals have rights

⁽¹⁾ *Iraqi Constitution* 2005, s. 29.

⁽²⁾ *Universal Declaration of Human Rights* 1948, Art. 16(1). *International Covenant on Civil and Political Rights* 1966, Art. 23 (2).

to life, liberty and security as well as human dignity is respected by law, all these right are protected by the law.⁽¹⁾ The Iraqi constitution 2005 indicates to right of individuals to enjoy life and to security,⁽²⁾ as well as guarantees and protects freedom of individuals and dignity of the humankind,⁽³⁾ personal privacy is also recognized by the law, including family life privacy.⁽⁴⁾ In addition, Sex equality is a genuine principle in Iraqi law as well as in universal covenants that Iraq is obliged to them. The Iraqi constitution 2005 refers that all individuals, males and females, are equal before the law, and prohibits discrimination between male and female.⁽⁵⁾ The United Nations Universal Declaration of Human Rights 1948, also asserts this principle and refers that all human beings are equal before the law.⁽⁶⁾ The Iraqi constitution also guarantees equal opportunity for all its citizens regardless gender of them.⁽⁷⁾

In respect to relationship between sex selection technology and fundamental human rights, relevant human rights such as right of founding a family, liberty and privacy of family might may support permissible approach towards sex selection, where parents have freedom of choice in their own family including right of having a particular gender of offspring. Consequently, various practices of sex selection technology should be

⁽¹⁾ This right is indicated in UDHR, Arts. 1,3.

⁽²⁾ *Iraqi Constitution*, s. 15.

⁽³⁾ *Iraqi Constitution*, s. 33.

⁽⁴⁾ *Iraqi Constitution*, s. 17.

⁽⁵⁾ The *Iraqi Constitution* stipulates in s. 14 that ‘Iraqis are equal before the law without discrimination based on gender, race, ethnicity, nationality, origin, color, religion, sect, belief or opinion, or economic or social status.’

⁽⁶⁾ UDHR, Art. 7 stipulates that ‘All are equal before the law and are entitled without any discrimination to equal protection of the law.’

⁽⁷⁾ *The Iraqi Constitution*, s. 16.

allowed and available for parents. On the other hand, the right of couple in founding a family and their reproductive freedom allows couple who are unable to have offspring naturally to access assisted reproductive technology to conceive offspring, but without selecting gender of children unless there is a necessity requires that. Sex selection technology may also contradict legal principles and human rights including right to life and sex equality. Especially, if preference of a particular gender is the only intention for carrying out sex selection, such view reflects a discrimination against the opposite gender.⁽¹⁾

In regard with legislative provisions, as stated, there is no direct provision in Iraqi law addresses issue of sex selection. But, there are some indirect provisions related slightly to sex selection. For example, provisions that outlaw and penalize abortion, as included in the Iraqi penal code 1969.⁽²⁾ These provisions apply in case of pregnancy when embryo is already located into mother's womb. So that, they cannot be extended to include the modern methods of sex selection technology, where procedure of choosing sex of a child is done on embryo outside of woman' body, before embryo is conceived and implanted into the mother's uterus. Furthermore, Health Act 1981 in Iraq asserts the right of unborn child in receiving the appropriate healthcare, which assists in delivering a healthy child,⁽³⁾ such right is recognized in Iraqi law although the human embryo has no legal personality under Iraqi law.⁽⁴⁾

⁽¹⁾ This will be discussed in details in Part IV.

⁽²⁾ *Penal Code* 1969 in Iraq, ss. (417-419).

⁽³⁾ *Health Act* 1981 in Iraq, s. 6.

⁽⁴⁾ *Civil Code* 1951 in Iraq indicates in s. 34 the legal personality starts at moment of birth birth of a child alive and ends at moment of death.

B: - Sex Selection in Australia

Australia is a federation with a formal written Constitution, the Commonwealth of Australia consists of states and territories. The federal parliament has the power to pass laws apply to all Australian citizens, Australian states and territories have also the power to enact laws apply to residents of the relevant state or territory.⁽¹⁾ In regard with sex selection technology, there are regulations and legislation on both federal and state levels. Practices of ART, including sex selection technology, are regulated in Australia by State legislation which applies within the State,⁽²⁾ While, the ethical guidelines on assisted reproductive technology apply in other states and territories, where they apply in the whole Australia where there is no legislative text.⁽³⁾ In general, laws in Australia prohibit all forms of sex selection except for medical reasons.

In Victoria, *Assisted Reproductive Treatment Act 2008*, includes a ban on sex selection procedure. It prohibits using gamete or embryo in any means to generate a child of a particular gender, and it imposes penalty sentences for any breach to law, penalties include fines or two years imprisonment or both.⁽⁴⁾ This Act, however, includes exemption which allows performing

⁽¹⁾ Michael Meek, *Australian Legal System* (Lawbook, 4th ed., 2008), 2.

⁽²⁾ So far, four Australian states have enacted legislation for regulating assisted reproduction; are Victoria, New South Wales, Western Australia and South Australia.

⁽³⁾ The Ethical Guidelines were issued by of National Health and Medical Research Council (NHMRC) 2004.

⁽⁴⁾ *Assisted Reproductive Treatment Act 2008* (Vic), s. 28(1).

sex selection for avoiding the transmission of genetic diseases or disorders to the child, as well as permitting use of sex selection if the patient review panel approved using it to produce a particular sex of the child.⁽¹⁾ That means legislation in Victoria allows sex selection technology for medical reason, or otherwise with approval of the patient review panel. Similarly, law in south Australia does not permit non-medical sex selection. The prohibition on sex selection for non-medical purpose is derived from the general eligibility criteria for accessing to ART.⁽²⁾

In other Australia States and territories where there is no ARTs legislation, the NHMRC ethical guidelines on ART apply. Although these guidelines are not legally binding or enforceable in Australia, ART clinics are required to consider and comply to ethical guidelines for the national accreditation system to obtain a license for practicing ART.⁽³⁾ According to the ethical guidelines, carrying out sex selection for non-medical reason by any means is not permitted.⁽⁴⁾ The guidelines also refer that the use of PGD for selecting sex of a child is prohibited, except if it is performed for

⁽¹⁾ ART Act 2008 (Vic), s. 28(2).

⁽²⁾ *Reproductive Technology (Clinical Practices) Act 1988 (SA)*, s. 13.

⁽³⁾ ART Clinics get accredited for carrying out ART by the reproductive technology accreditation committees of the fertility society of Australia. *Research Involving Human Embryos Act 2002 (Cth)*, s. 8.

⁽⁴⁾ It is referred that 'admission to life should not be conditional upon a child being a particular sex. Therefore, pending further community discussion, sex selection (by whatever means) must not be undertaken except to reduce the risk of transmission of a serious genetic condition. Australian Government, The National Health and Medical Research Council, *Ethical Guidelines on Assisted Reproductive Technology in Clinical Practice and Research (2004)*, 11:1.

reducing risk of passing serious genetic diseases from parents to offspring.⁽¹⁾

C: - Sex Selection in New Zealand

New Zealand adopts prohibitive approach in relation to sex selection although purpose of NZ Act is to protect and promote the health, safety, dignity and the rights of women and children in the use of ART procedures.⁽²⁾ The *Human Assisted Reproductive Technology Act 2004*, in section 5 (1) bans selecting IVF embryos for implantation on the basis of gender of the embryo. This Act also outlaws any procedure may lead to increase possibility that conceived embryo will be of a particular gender. Penalty imposed on breaching this section is imprisonment up to twelve months or fine or both.⁽³⁾ So that, ART Act did not include any exception for carrying sex selection for medical purpose, but penalty is not applied if sex selection is carried out for medical reason in order to prevent passing genetic diseases.⁽⁴⁾

D: - Sex Selection in Canada

The *Assisted human reproduction (AHR) Act 2004*, indicates in the general principles of it that health of children born through ART has the priority in

⁽¹⁾ The NHMRC Ethical Guidelines on ART (2004), 12:2.

⁽²⁾ *Human Assisted Reproductive Technology Act 2004* (NZ), s. 3(a).

⁽³⁾ HART Act 2004 (NZ), s. 5(2).

⁽⁴⁾ HART Act 2004 (NZ), s. 5(3).

making decision in respect to assisted human reproduction.⁽¹⁾ The Canadian Act prohibits procedures may generate a human embryo of a particular gender except for medical purpose.⁽²⁾ Prohibition here applies to all procedures of sex selection that may ensure or increase the likelihood that the generated embryo would be of a particular gender. The Canadian Act also includes exemption which allows performing sex selection for a medical purpose, including diagnosis, preventing, or treating a gender-linked genetic abnormality or disease. So, prohibition does not apply on other procedures such as prenatal examinations that may be undertaken to detect and identify gender of the conceived embryo.⁽³⁾

IV: Arguments in Respect to Sex Selection

There is a significant controversial debate over sex selection technology in general and employing sex selection for non-medical purpose in particular. The arguments in relation to sex selection consider using this technology for assisting parents to have a child of desired gender, especially if the intention is to attain family balance, as well as reducing transferring genetic diseases. While, the main arguments against sex selection is based on an assumption that most people who would use sex selection in a favor of having male gender, which leads to increase number of males in the society compared to females.⁽⁴⁾ This part highlights various perspectives in

⁽¹⁾ *Assisted Human Reproduction Act 2004* (Canada), s. 2(a).

⁽²⁾ AHR Act 2004 (Canada), s. 5(1e).

⁽³⁾ Glenn Rivard and Judy Hunter, *The Law of Assisted Human Reproduction* (LexisNexis, 2005), 79.

⁽⁴⁾ Dance, "Sexism and 'the Superfluous Female'", 234.

this context, and the main arguments submitted in regard with sex selection technology, as well as weighing advantages and disadvantages of this technique. Arguments in relation to sex selection could be considered in four main issues.

A: -Sex Selection and Imbalance of the Sex Ratio

There is general concern that practicing sex selection might include a negative effect on the society, where it may cause imbalance of sex ratio especially in societies where there is sex tendency for sons, where it leads to imbalance in number of males compared to female babies.⁽¹⁾ It is, however, such desire of having a male baby is not general desire nor existed in all societies. where in the United States, for instance, there is no tendency or preference to particular sex over the another gender.⁽²⁾ Notwithstanding, parents may utilize sex selection technology for fulfilling their desire of having a child of particular gender, studies in this context indicate that intention of sex selection is to have equal number of male and female, which assists in achieving balance of genders within a family.⁽³⁾ So, sex selection for social purpose should only be available for those parents who already have child of one sex and seek to conceived a child of the opposite sex.⁽⁴⁾

⁽¹⁾ Giuseppe Benagiano and Paola Bianchi, "Sex Preselection: An Aid to Couples or a Threat to Humanity?," *Human Reproduction* 14, (1999): 868,869.

⁽²⁾ Farrell, "Where Have all the Young Girls Gone? Preconception Gender Selection in India and the United States," *Indian International and Comparative Law Review* 13, no.1 (2003): 253,268.

⁽³⁾ Farrell, "Where Have all the Young Girls Gone?," 269.

⁽⁴⁾ Deeney, "Bioethical Considerations of PGD for Sex Selection," 345.

Furthermore, it has been argued that sex selection could lead to control the increased population. Parents who have strong desire to procreate a child of particular sex naturally would attempt pregnancy multiple times to have a child of that sex, and once they have desired baby, they would stop procreation. Sex selection could grant them an opportunity to have a preferred child, that might result fewer children within a family overall, which means that sex selection could be used as a method to control the population.⁽¹⁾ Therefore, potential imbalance resulted from application of sex selection could be resolved through regulating sex selection to prevent imbalance in the society, through restricting the use of sex selection for social motivation in limited circumstance to achieve family balance, allowing families that have children of a particular sex to use technology of sex selection for having a child of the opposite sex.⁽²⁾

B: - Sex Selection and Harm to Child and Woman

Law in general has interest in providing protection for children as they consider the most vulnerable in the society, in relation to different issues including reproductive technology. In this context, it has been argued by opponents of sex selection technology that this technology might cause harm to the health of woman who undergoes the process and children born through it. Using IVF for sperm sorting or PGD may cause harms to mother health, risks in this context including; dangerous multiple gestation

⁽¹⁾ Deeney, "Bioethical Considerations of PGD for Sex Selection," 346.

⁽²⁾ Michelle Taylor-Sands et al, "Non-Medical Sex Selection in Australia: Public Views and Bioethical Concerns," *QUT Law Review* 18, no.2 (2019): 44,49.

and ovarian hyper-stimulation syndrome.⁽¹⁾ In regard with risk of sex selection to children born through this technology, they are likely to be delivered through cesarean surgery, and newborns need extensive care, as well as they would face risks of prenatal death and low birth weight compared to children who would be naturally conceived. According to this argument, involved risks outweighing the desire of having preferred sex of child.⁽²⁾

Another argument against sex selection, this technique has negative impact on welfare of born children in the light of expectations of parents who resorted this technique for having children. Choosing gender of children through sex selection could cause a negative psychological impact to children who are chosen by this method basing on their gender, where they may feel the failure, and suffer from depression if they do not meet up to that sex norms.⁽³⁾ Further, children born through sex selection technique may suffer from an emotional harm, as they conditionally wanted, and they would live under parental expectations that might restrict their development. Parents also may get disappointed of their children for failing to take their role to reach parental expectations.⁽⁴⁾ This issue, however, cannot be generalized, it can be imagined if parents would choose their child sex to do specific role basing on the gender. So, there is

⁽¹⁾ W. Dondorp et al, "ESHRE Task Force on Ethics and Law 20: Sex Selection for Non-Medical Reasons," *Human Reproduction* 28, no.6 (2013): 1148,1449.

⁽²⁾ Deeney, "Bioethical Considerations of PGD for Sex Selection," 347.

⁽³⁾ Deeney, "Bioethical Considerations of PGD for Sex Selection," 352.

⁽⁴⁾ W. Dondorp et al, "ESHRE Task Force on Ethics and Law 20," 1450. Dance, "Sexism and "the Superfluous Female," 236.

no way to think about this concern in the light of the equal status of male and female and having equal opportunity.

C: - Sex Selection and Gender Discrimination

It has been argued that permitting sex selection may lead to grant value to individuals basing on their gender, which constitutes for sex discrimination against female gender. This argument rises especially in the traditional societies, where a culture of sex preference and tendency to particular sex is existed, such as some Asian countries including China and India, where there is an inequality between male and female.⁽¹⁾ This issue might produce a culture of inequality both sexes in the society, making a male represent a superior gender while female is inferior gender.⁽²⁾ Such culture flourishes in society when a male gender dominant is existed and sex preference is common. So that, utilizing sex selection to choose a particular sex of offspring might perpetuate sex biases and gender stereotypes in the community that is already existed.⁽³⁾ However, discrimination against a particular gender is not big issue in relation to sex selection in other societies that grant both male and female equal status.⁽⁴⁾ Moreover, several studies carried out in the United States and Germany have shown that intention of parents through using sex selection is to achieve family balance rather than a particular gender dominance.⁽⁵⁾

⁽¹⁾ Seema Mohapatra, "Global Legal Responses to Prenatal Gender Identification and Sex Selection," *Nevada Law Journal* 13, (2013): 690, 691.

⁽²⁾ Farrell, "Where Have all the Young Girls Gone," 270.

⁽³⁾ Deeney, "Bioethical Considerations of PGD for Sex Selection," 349.

⁽⁴⁾ Farrell, "Where Have all the Young Girls Gone," 270

⁽⁵⁾ VLRC, *ART and Adoption*, 81.

Further, practicing sex selection has no influence on the gender discrimination whether to better or worse and it is irrelevant to this issue.⁽¹⁾ Thus, sex selection could consider illegal as it is a breach to equality principle, unless there is an innocent intention such as preferring particular sex for medical or social necessity. For example, using sex selection to avoid passing genetic diseases from parents to children, or carrying out sex selection for achieving family balance. Due to the general view of society in Iraq is biased to male gender, law should restrict using sex selection to ensure that it does not reflect discrimination against female gender, which means restricting application of this technique especially for social reason in limited circumstances. Otherwise, sex selection technology might lead to imbalance in a family and consequently in society as all.

D: - Sex Selection and the Slippery Slope

There is an argument submitted by opponents of sex selection technology indicates that allowing sex selection technique might represent a step leading to slippery slope towards employing technology for designed babies. There is fear that sex selection may lead to open the flood gate for further uses and practices of sex selection that may interfere to choose genetic traits of human embryos.⁽²⁾ Where, sex selection may make it possible for parents to select their offspring's gender may result in selecting and designing other traits of their children, including color and

⁽¹⁾ Farrell, "Where Have all the Young Girls Gone," 270.

⁽²⁾ VLRC, "ART and Adoption", 82.

skin, eyes and hair following the method of genes manipulation as eugenics.⁽¹⁾

It has, however, suggested that utilizing sex selection for choosing characteristic of children cannot be wrong in all its cases, where measurement used here is whether selecting specific characteristics, gender of a child, would restrict a child's chance of having normal life.⁽²⁾ Moreover, it is indicated that fear of practicing genetic enhancement is not sufficient justification for making argument against sex selection. Where, choosing sex of children is different from choosing of other specific traits for children, a child also would not complain that parents have chosen the opposite gender, especially in societies where both sexes are equally valued.⁽³⁾

V: Call for Regulating Sex Selection

This parts discusses the potential regulatory options for sex selection, and proposes a suitable option for Iraq, as well as presenting recommendations to be adopted by Iraqi law in relation to sex section and other related practices.

A: - Regulatory Options

This point discusses various approaches regarding regulation of sex selection; including necessity of regulation, prohibitive approach,

⁽¹⁾ Dance, 'Sexism and "the Superfluous Female,"', 241.

⁽²⁾ Dondorp et al, 'ESHRE Task Force on Ethics and Law 20,'', 1451.

⁽³⁾ David McCarthy, "Why Sex Selection Should Be Legal," *Journal of Medical Ethics* 27, (2001) 302,305.

permissible approach and restricted approach for regulating sex selection technology.

Regarding requirement of regulation: As discussed, legal provisions in Iraqi law are insufficient to provide responses in relation to sex selection. Further, sex selection technology cannot be left without regulation determines the allowed practices of sex selection, and requirements should be met for carrying out sex selection. So, intervention of the government for regulating sex selection is necessity in order to obtain benefits of this technology and prevent or minimize disadvantages of sex selection, in the way to control different uses of sex selection in the society.

In terms of reviewing various available approaches for regulating sex selection, prohibitive regulation which imposes a complete ban on all practices of sex selection. This approach might be unconstitutional as it contradicts the fundamental human rights indicated in the constitution, such as reproductive freedom of parents and privacy of the family as well as right to life and healthcare. Similarly, Permissible regulation which allows couple to choose gender of their child through sex selection technique without any limitations is not desirable attitude, especially in the traditional communities like Iraq. Where, tendency and preference in the society is for male gender. So, the large and unrestricted practice of the technique might constitute to racism and represent a threat to equality principle and may establish for the gender discrimination.

Restricted approach about sex selection refers that sex selection should be done in certain circumstances, and law should interfere by imposing conditions and requirements for carrying out sex selection. In addition, law

should draw a distinction between practices of sex selection that are allowed and those prohibited practices. Restricted model for regulating sex selection technology may assist in reducing or avoiding disadvantages of sex selection, and fulfilling wish of parents and needs of the society. Parents' wishes and society needs in relation to choosing gender of offspring should be compatible with sex equality, otherwise it would be unlawful practice. Regulation of sex selection should be also employed in order to correct any imbalance of sex ratio in the society, that might occur in societies where there is a strong tendency to a particular sex. Thus, the proper option for that could be through restricting permission for sex selection in very limited circumstances.

B: - Suitable Regulation for Sex Selection

As there is no general prohibition under Iraqi law on practicing sex selection. That does not mean all practices of sex selection are permitted. Law should distinguish between different practices of this technique basing on the process used and employed for sex selection, and goal and intention for carrying out sex selection. Allowing of sex selection technology for medical reasons in general to avoid or reduce risk of the passing genetic diseases and disorders from parents to their offspring, this could be through modern techniques of sperm sorting and PGD.

In addition, permitting sex selection for non-medical in very limited circumstances, in case when parents have a serious interest in having a child of a particular sex to achieve family balance. For instance, if parents have children of a particular sex and wish to have a child of opposite sex.

Law may allow using modern technology of sex selection to fulfill desire of parents who have two or more children of a particular gender to use sex selection technology. Using sex selection in such case does not reflect any discrimination against a particular sex. In addition, it is useful as parents do not need to repeat birth several times to reach their goal in having a desired child. So, parents can manage and control family financial expenses by having small family with both genders.

Finally, legislation should include penalties on any breach to legal provisions relating to sex selection. Penalties may be varied of fines, imprisonment, and withdrawing the license granted to ART clinics.

C: - Recommendations for Modernizing Iraqi Law

Below are some recommendations for modernizing Iraqi law in relationship to sex selection and others relevant issues, that I believe it is necessary to be taken into account in order to prevent or minimize harm to women and children: -

- 1- Iraqi law should interfere to regulate sex selection, and should adopt restricted approach of regulation, by allowing sex selection in certain circumstances.⁽¹⁾ Sex selection should be permitted for medical reason, to avoid or reduce risk of passing genetic diseases or disorders from parents to offspring, and for social reason in

⁽¹⁾ Regulating sex selection technology could be achieved through issuing a legislation of human reproduction concerning determination of legality of different practices of assisted human reproduction including technology of choosing sex of newborn and required conditions for generating human fetus.

- limited circumstances if there is a serious social necessity requires it, and with approval of the suggested specialized panel.
- 2- Establishing a specialized panel, consists of experts in medicine and law, as it is in Victorian Act. Task of such panel is to grant license for medical clinics that would provide ART services including choosing gender of offspring technique, and monitoring and inspecting different activities of ART clinics, to make sure that there is no breach to law. Applications for carrying out sex selection, should be applied by relevant individuals and parties to the specialized panel for reviewing, and basing on each case and condition, the panel would make decision whether or not to grant approval for carrying out sex selection. any decision made by the panel could be reviewed by tribunals of personal status matters on the request of relevant individual who has an interest affected by the decision of the panel.
 - 3- Iraqi law should be reformed by lifting position of women in the society to be equal legally and socially to position of men in Iraq, and eliminating or minimizing the injustice view in the society towards females as inferior, in the way which ensures not looking at females as a burden. Such policy may lead to minimize the general tendency to male over female in regard with choosing gender of offspring.

VI: Conclusion

Sex selection technology grants parents an opportunity to choose gender of their offspring. It is a process performed prior to conception after identifying chromosomes of gender of sperms, or identifying gender of the embryo before transferring it into woman's uterus. Sex selection could be done for various purposes; medical and non-medical or social motivations. Iraq lacks of a regulation addresses sex selection technology, while some other countries have enacted legislation regulating sex selection. Absence of a special legislation considers shortcoming and leaves a legal vacuum in relation to this important area, where the classical provisions and general principles in the Iraqi law are inadequate to govern this technology. It has been shown that laws in western countries allow sex selection for medical reason, to reduce risk of passing genetic diseases and abnormalities to offspring, while performing sex selection for social reason is prohibited. This article has argued that Iraqi law should interfere to enact legislation for regulating different methods of sex selection, and determining practiced that should be allowed and those prohibited practices. Initially, law may permit employing sex selection for medical reasons, and allowing sex selection for non-medical reason in very limited circumstance. For instance, allowing parents, who have already children of particular gender, to access sex selection to have a child of the opposite sex which in not existing in the family. This permission may assist parents in achieving family balance, and it does not reflect any discrimination against a particular sex. While, employing sex selection to generate a particular gender, mostly male for personal, cultural and economic considerations should be prohibited as it exacerbates discrimination against women.

Finally, this paper included some recommendations for establishing specialized panel for monitoring activities of ART clinics, as well as reforming the Iraqi law by lifting women's position in order to eliminate sex based discrimination, and to minimize cultural tendency to male gender.

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