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Assisted Reproductive Technologies and Religious Dilemmas

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Abstract

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Infertility is the diminishing or complete absence of an ability of a person to produce offspring. A significant clinical and religious issue influences people of reproductive ages, in every corner of the world. Looking for a solution for infertility isn't just reasonable, but additionally encouraged in Islam as it is a human instinct for children. “O Lord! Grant us spouses and offsprings who will be the comfort of our eyes.” (25:74) Various methods to address infertility have entered the realm of science and technology. These ways include In-vitro Fertilization, Artificial Insemination, Cryopreservation, Surrogacy, and cloning. These techniques, on the other hand, are linked to several other legal, ethical, and religious issues. This article explores the legality of assisted reproductive technologies on the scale of Islamic teachings. The question has always weighed the maintenance of a family's legacy against overcoming infertility within a marriage. Certainly, *Sharia* rulings should be applied through reasoning to resolve the issue of infertility.

Introduction

Infertility occupies a unique position among the myriad diseases that plague humanity. Because of its impact on the psychological and social well-being of not just the index patient but also his or her companion, it is a major source of concern for medical and religious experts.

Infertility (العقم) is characterized as the decreased or complete shortfall of the capacity to produce offspring. Infertility is defined as a year of unwanted non-conception during the fertile part of the menstrual cycle with unprotected intercourse.¹ Infertility is distressing for couples psychologically; the couple is more stressed, aggressive, anxious, melancholy, self-blame, and psychotic in the vast majority of instances.²

Infertility can be classified into two categories: primary and secondary. When a woman has regular sexual encounters for a year and yet is unable to conceive, then she experiences primary infertility.³ However, Secondary infertility is when a woman is not able to conceive after at least one successful pregnancy.⁴

Thus, Infertility has been regarded as a major issue since the dawn of human existence. It is a dangerous cankerworm ruining the joy and happiness of many couples. Infertility and the procreation of children whether boys or girls are both determined by Allah's will. Infertility is a trial subjected to Allah's servants:

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يُرْوِّجُهُمْ ذُكْرَانًا وَإِنثَاءً وَيَجْعَلُ مَنْ يَشَاءُ عَقِيمًا...

“Or He gives both male and female [to whomever He wills], and causes to be barren whomever He wills...”⁶

Allah has the authority to direct the entire route and also provide solutions to all worldly issues. Human is the caliph of the entire world and the whole nature is submissive to them. However, without *Shariah's* constraints and standards, the door to experiments is not wide open. *Shariah* has given some basic principles regarding pro-creation. Muslim scholars extracted principles regarding the treatment of infertility from the Islamic *shariah*. The infertile couple should adopt certain methods to cope with infertility but within the limits prescribed by Islamic *shariah*. It is narrated in hadith:

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مَا أَنْزَلَ اللَّهُ دَاءً إِلَّا أَنْزَلَ لَهُ شِفَاءً

“Allah doesn't send down any disease, but He also sends down the cure for it.”

The overall goal of Medical science is to obtain and implement appropriate measures that, with Allah's blessing, aid in the preservation or restoration of human body health.⁸ It is completely consistent with the

Qur'ānic idea of human happiness. Medicine has traditionally been recognized by Muslims as a science with obvious origins in the Quran and the Prophet's Sunnah (S.A.W). Medicine was first opened to mankind by Prophet Idris (A.S), which added to the dignity and prestige of medicine in early Islamic civilization.⁹

Thus, Islam is neither anti-science nor anti-medicine. It allows man to seek a cure for a disease. In the field of modern technology, assisted reproductive technologies have made a significant advancement in the treatment of infertility. Islam accepts medical science and adopts a flexible approach toward the best rules, techniques, and procedures from the various traditional medical.

Assisted Reproductive Technologies

The man from time immemorial is seeking ways to address infertility. During the past few years, some modern technologies have expanded the field of science and technology. Several improvements have appeared in human beings both physically and intellectually, as a result of learning and adaptation. The use of artificial reproductive technologies is also directed in a new age. Islam encourages man to seek knowledge and new inventions. However, these innovations must be measured on the scale of Islamic Sharī'ah, and the legality of these innovations must not be brushed aside.

Modern technologies to address infertility include Transplantation of the reproductive system, In-vitro Fertilization, Artificial Insemination, Cloning, Surrogacy, Sperm/gamete donation, and adoption as well. Islamic *Shariah* is dealing with the challenges raised by these modern ways. These modern ways and the ruling of Islamic *shariah* have been discussed below.

1. Transplantation of the Reproductive System

In general, reproductive organ transplantation may involve the transplantation of male reproductive organs such as the penis, scrotum, testes, and vas deferens, as well as female reproductive organs such as the vagina, fallopian tubes, ovary, and uterus.

Sexual and fertility issues are predicted to be resolved by reproductive organ donation. It does, however, create significant ethical and moral difficulties, particularly from the standpoint of some religions and societies. When it comes to genital affairs and organ donations in general, Islam, for example, takes a firm stance.

“The Islamic Organization for Medical Sciences (IOMS)” and the “International Islamic Fiqh Academy (IIFA)” outlawed the transplantation of reproductive organs (male testicles or female ovaries) that produce

gametes and sex hormones in 1989 and 1990, respectively.¹⁰ There were two points;

i. It is prohibited to transplant ovaries and testicles because gametes are continuously created by glands and the receiver inherits the donor's genetic heritage.

ii. The transplantation of external genital parts, except "*awrat mugallaza*" (that refers to sexual organs of both male and female), is legal when there is a valid requisite and in agreement with *Shariah* principles and conditions specified in International Islamic Fiqh Academy.¹¹

Transplanting gonads is unethical in the realm of reproduction, particularly in terms of biological/genetic relatedness. Transplanting a man's testicles, for example, would imply that the child would not be biologically or genetically connected to him, but the donor. The same is true for ovary transplantation. The final moral view, however, distinguished the uterus from the vagina and penis. Although not specifically mentioned in "The Islamic Organization for Medical Sciences" and "International Islamic Fiqh Academy" fatwas that the uterus could be transplanted under the same criteria as other human organs. With a few exceptions, transplanting the vagina or penis was expressly forbidden. Transplanting reproductive glands or organs, including the penis and vagina, according to 'Abd Allah, does not pose any ethical issues. He stated that after the organ is transplanted, it will be considered the recipient's property rather than the donor's. This restriction is more concerned with sexual intercourse in the moral realm of procreation, particularly with *'awra mughallaza*. The primary idea is that if these two intimate parts can't be touched or even seen by anybody other than one's spouse, they can't be transplanted into another person's body to facilitate sexual intercourse.¹²

In 2004, Al-Adawey (Head of the Council Jurisprudence Research Committee), declared that it is prohibited to transplant the uterus. He upheld that an infant takes characteristics of the mother's uterus and the uterus has its genealogical characteristics. A question will arise Who is the real mother of the child when the child carries the genealogical characteristics of the donated uterus in which it grows?¹³

The donation of fertility and progeny organs is prohibited, as agreed upon by jurists. The Fiqh Council agrees with this viewpoint, citing *maqasid-e-sharia* i-e protection of progeny. Thus donating oocytes, sperm, or even the uterus is not permitted.¹⁴

It's worth noting that traditional organ donation is only permitted in Islam if it's really necessary to preserve lives. Many people's lives are dependent on organ donations. Donating reproductive organs, on the other

hand, is not a necessity. It is not a form of life-saving treatment, even though it is undertaken to create offspring. Furthermore, having children is a sort of supplemental rather than a requirement. Indeed, Islam distinguishes between what is considered required and what is not.

2. Artificial Insemination

For a long time, artificial insemination has been used as reproductive technology. It is the process of putting sperm into a woman's vagina or uterus without sexual contact and with or without hormonal stimulation.¹⁵ The sperm may be that of a woman's husband, partner, or some third-party donor.¹⁶

However, insemination is permissible if carried out during an intact marriage.¹⁷ Its legality of it created a lot of debates among Muslim scholars. Professor Munawar, A.A., a founding member of the International Society for Science and Religion, commented that "*The prohibition against Artificial insemination by Husband is implicitly based on a premise that such a practice could be considered as an alteration in Allah's design of creation. This is a failure on the part of the legislator to recognize that Artificial insemination by the Husband may be necessitated by an organic disorder in the body of the husband otherwise there appears to be no logic in sacrificing mutual intimacy for the sake of an adventure.*"¹⁸

The same view is upheld by Sheikh Mahmoud Shaltut, a famous Egyptian religious scholar. He says: "It is a heinous crime and a serious sin that should be placed alongside adultery. Both (adultery and artificial insemination by someone other than the husband) are similar in nature and effect; that is, the tillage is inseminated by a stranger in both circumstances."¹⁹

Artificial insemination is allowed in *Shariah* and results in the child being legal, only if the sperm is of the husband, keeping in consideration that marriage is legally sound.²⁰ However, when the husband's sperm is utilized to fertilize an egg that was not generated by his wife the fertilized egg is put in the uterus of his legal wife. A lady who does not generate eggs can find herself in this scenario. This method has a tinge of adultery. This is something that Islamic law strongly opposes. Islam promotes open and honest family relationships, steering families away from infidelity and all that it entails. Although the sperm is extracted from the husband in this scenario, the sperm does not generate anything on its own. When it immunizes the wife's egg, it is only by God's will that the cycle of life begins. The egg is replaced with an egg of a woman other than his wife. Quran expresses;

“Your wives are your tilth; go, then, unto your tilth as you may desire”

It means that it is not allowed to take the services of a third party either donating uterus, sperm, egg, or embryo otherwise it will be adultery.

3. Sperm/Gamete donation

Wish to have a progeny, leads to the development of sperm banks. If the husband is infertile and not capable of impregnating his wife, he can take semen from the sperm bank. In these banks, the semen of the husband is ejaculated and then preserved at a specific temperature to use in the future for the artificial reproduction of a child.²² The same is the Sperm /Gamete donation as a method to treat infertility.

Although these modern reproductive technologies have pulled out the man from the trouble of infertility, they raise many legal issues. Most Muslim jurists have issued religious pronouncements condemning the donation of sperm for insemination and equating it to adultery. The necessity of preserving the bloodline is also highlighted by Muslim jurists. Some jurists, additionally, stress the significance of lineage preservation in Islam.²³ This is because Islamic law recognizes a child’s right i-e to be raised by both parents.

No third party should be involved in the reproductive process, such as donating sperm, ova, pre-embryo, or surrogacy.²⁴ Furthermore, any gamete or sperm union that results in pregnancy outside of marital relations is prohibited.²⁵ As a result, due to gene mixing, oocyte and sperm donation are not permitted.²⁶ Thus, Islam promotes gene purity and heredity by forbidding the mixing of genes.²⁷

Al Munajjid adds: “*If a third party other than the spouse is involved in this process such as when the sperm comes from another man, and then fertilized, is unlawful. It is counted as Zina or Adultery.*”²⁸

Another issue with gamete donation is the possibility of incest among the kids of unknown donors. As Islam outlaws incest, there is a great likelihood that single donor offspring will meet and marry each other. In Quran, it is indeed mentioned that;

حُرِّمَتْ عَلَيْكُمْ أُمَّهَاتُكُمْ وَبَنَاتُكُمْ وَأَخُوتُكُمْ وَعَمَّاتُكُمْ وَخَالَاتُكُمْ وَأَخَافَتُكُمْ وَأَخْتَاتُكُمْ وَأُمَّهَاتُكُمْ...

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وَبَنَاتُ الْأَخْتِ وَأُمَّهَاتُكُمْ...

“Prohibited to you (for marriage) are your mothers, daughters, sisters; father’s sisters, mother’s sisters, brother’s daughters, sister’s daughters ...”

Third-party muddles the concepts of family, descent, and inheritance. In Islam, marriage is a system that guarantees the biological transfer of inheritance. Preserving each child's origin is not only a goal of Islam but its moral obligation too, to have a clear identification of the child's biological mother and biological father. The third-party donation destroys a child's ancestry which is both morally and psychologically damaging. According to *Shariah*, the father of a kid must be the spouse of the child's mother, otherwise, the kid is considered illegitimate. Furthermore, the *Shariah* ruling of inheritance is founded on the natal father and natal mother, moreover, the proportions of inheritance are explicitly established in Quran.³⁰ Therefore, breaking this legislation is prohibited and regarded as a serious offence. Islamic *Shariah* gives necessary guidelines for family formation and prohibits the mixing of genes to remove disturbance and chaos from society.

Thus, the Quran prohibited donor eggs, donor sperm, and donor embryos by stating;

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فَجَعَلَهُ نَسَبًا وَصِهْرًا

“Then has He established relationships of lineage and marriage...”

The biological father and mother will be different from the “married couple” if the child results because of donor sperm, eggs, or embryo. In *Shariah*, it is equivalent to adultery because of muddled lineage.³² Indistinguishable lineage may lead to a person marrying his/her sister, brother, or any close relative even if the toughest standards are placed to avoid it. If donor gametes are used against the restriction, *Shariah* applies the following rules; In the case of donated sperm, the “husband” is regarded as the legal father, though, he is not a biological father. Furthermore, if a donated egg is utilized, the legal mother is the mother who gave birth. However, she is not a biological mother.

4. Surrogacy

Surrogacy involves a third party and comes in two forms; a woman can donate either her uterus or her uterus and her ovum both, in the first case. If the only uterus is needed, the couple will go through IVF and the fertilized ovum will be implanted in the uterus of the donor woman. However, in the other case, the donor woman's uterus will be artificially inseminated with the husband's sperm and when the baby is born, the surrogate mother is supposed to hand over the kid to the couple.³³

Surrogacy is universally prohibited by jurists due to lineage issues.³⁴ The following ayah is quoted by them;

35
إِنَّ أُمَّهَاتِهِمْ إِلَّا آئِيَّاتٍ وَلَدَتْهُمْ

“...None can be their mothers except those who gave them birth...”

The only possible exception is polygamous marriage, where a co-wife agrees to undergo in surrogacy procedure.³⁶

The Islamic Fiqh Council of the Muslim World League, on the other hand, has reversed its previous opinion regarding surrogacy amongst wives of the same husband.³⁷ Al-Mubarak argued that surrogacy cannot be considered lawful on the analogy of wet nursing because *Shariah* holds that wet nursing creates a special link between breastfed children, lactating mothers, and their families.³⁸ He adds that the Quran and Prophet Muhammad (S.A.W) also prohibited marriage between foster relations.³⁹

According to jurists, if surrogacy occurs, then the surrogate birth mother is considered the “actual mother”.⁴⁰ This view is based on the Quranic ayah previously mentioned (58:2). In legal cases, many jurists favour the uterine (pregnancy and birth) mother over the biological mother.⁴¹ Jurists’ perspective appears to be more justifiable.

⁴² حَمَلَتْهُ أُمُّهُ كُرْهًا وَوَضَعَتْهُ كُرْهًا وَحَمَلُهُ وَفِصْلُهُ ثَلَاثُونَ شَهْرًا

“His mother carried him with hardship and gave birth to him with hardship, and his gestation and weaning [period] is thirty months...”

Also;

⁴³ وَإِذْ أَنْتُمْ أُمَّهَاتٌ فِي بُطُونِ أُمَّهَاتِكُمْ...

“When you were fetuses in the wombs of your mothers.”

However, Alaro opposes the issue of legal preference when surrogacy takes place, even though the prohibition is unresolved and he asked the jurists to conduct further research on it. Surrogacy is prohibited by the majority of jurists. It is considered illegitimate because it involves a third party with whom the husband is not lawfully married, which is a violation of Islamic Laws.

According to a *Fatwa* issued by the Fiqh council in 1984, some jurists allowed IVF using a husband’s sperm and an egg from a legally married wife, which was subsequently implanted into the legally married second wife. However, the council withdrew its agreement on surrogacy in 1985.⁴⁴ Irrespective of these rulings, this technique is a hot debate among scholars.

M. S. Tantawi in March 2001, issued a *fatwa* condemning an illegitimate practice of “renting out a uterus.” The Islamic Research Council in April of the same year also condemned surrogate maternity.⁴⁵ Even if the parties (biological father/mother and surrogate mother) agree on surrogacy, surrogacy remains prohibited due to lineage uncertainty.

Muslim scholars agree that the birth mother is a true mother if surrogacy is practised.

5. In-vitro fertilization

All humans whether religious or impious quest to produce their offspring. IVF in conjunction with other reproductive technologies provides hope to infertile couples.⁴⁶ Related to artificial insemination is the technique of In-vitro fertilization (IVF). In-vitro means “Within glass” (Latin),⁴⁷ where a woman is hormonally stimulated to produce multiple ova (eggs) which are aspirated and fertilized in the laboratory with sperm.⁴⁸

Dr. Edwards, an embryologist, and Dr. Steptoe, a gynaecologist, pioneered the fertility procedure known as In-Vitro Fertilization Pre-Embryo Transfer (IVF–ET) in the United Kingdom. They revealed the birth of Louise Brown, the first test-tube baby, to the world in July 1978.⁴⁹ Since then, a slew of new assisted reproductive technologies have emerged, perfecting and replacing older ones.⁵⁰ By the birth of the first test-tube baby, the public was alarmed that science was meddling with life and Allah’s laws.

IVF and its multiple variations, such as GIFT (Gamete intra-fallopian transfer), ICSI (intra-cytoplasmic sperm injection), and others only if the following requirements are met, have been ruled lawful; First and foremost, IVF must be performed on a married couple. Second, the sperm and eggs must come from the husband and the woman, respectively. Third, it must occur in the case of a legal marriage. Fourth, to limit the possibility of failure, the procedure must be carried out by a competent team.⁵¹

Sheikh Ahmad Kutty, a distinguished lecturer and Islamic scholar at the Islamic Institute of Toronto, states: “*IVF is permissible in Islam only on condition that both sperm and egg involved in the process originate from a man and a woman who are married to each other. To introduce an egg or sperm from a third person to the equation is akin to sharing the marriage bed with someone else. It is, therefore, considered no different from Zinā (adultery) in Islam. A child born through such a procedure is born of Zinā in Islam*”⁵²

The Islamic Fiqh Council argued that all of the following forms of IVF are prohibited:⁵³

- a. If a husband fertilized an egg of another woman and placed that embryo in his wife’s uterus.
- b. If a wife’s egg is fertilized by a man, other than her husband.
- c. If the embryo implanted into the woman’s uterus is the product of fertilization of sperm and ovum of another couple.

- d. If a person has two wives and he places the fertilized egg of one wife into the uterus of another wife.

Islam preserves the sanctity of the marriage contract and completely condemns the use of unlawful means in any sphere of life.

6. Cryopreservation

A process of freezing the bodily material which is then used later on is termed Cryopreservation.⁵⁴ Usually freezing and storage of gametes, zygotes, or pre-implantation embryos is referred to as Cryopreservation. In this process, semen is usually stored at a very low temperature by using a Cryo-protectant. Usually, cryopreservation is used for the following purposes;

- a. If a person is suffering from any disease and fears that the treatment of the disease may result in infertility. So, he freezes his sperm and uses this sperm later to fertilize the ovum of his wife.
- b. A person can preserve his sperm embryo before exposure to chemotherapy or radiation. After the treatment that frozen embryo is returned to the owner.⁵⁵

Sperm cryopreservation is lawful, and the frozen embryos are solely the property of the couple as long as the marriage contract is in effect.⁵⁶ Dr. Yusuf al-Qaradawi, Head of the International Union of Muslim scholars, commented; “*Islam protects people from the sin of Zina, and sperm donors commit Zina because they donate sperms to those with whom they are not in nikah.*”⁵⁷

Sharī’ah has allowed a woman to use the frozen sperm of his husband but it should be used during the span of marriage. It is haram to use the frozen sperm of the ex-husband either in case of divorce or death. As death renders the marriage union void, it is considered illegitimate under *Shariah*. If a husband is imprisoned but is still in contact with his wife, his frozen sperm can be utilized by his wife for reproduction.⁵⁸

Some jurists believe that freezing the remaining fertilized ova is permitted if they are only used in the following cycles for the same pair and the couple is still married. However, with the couple’s permission and within the appropriate parameters, they might be used for medical study. On the other hand, the International Islamic Fiqh Academy rejected to freeze pre-embryos in 1990, citing examples of gametes and pre-embryos mingling.⁵⁹

Conclusion

It can be concluded that Islam ensures the safety of lineage which is one of the purposes of Islamic Sharī’ah (*Maqāsid-e- Sharī’ah*) so the reproduction of a child; without the contract of marriage is strictly prohibited in Islam. *Shariah* forbids all those kinds of modern

reproductive techniques which involve a third party. All assisted reproduction technologies are allowed in Islam if the semen, ovum, and incubator (uterus) are obtained from a legally married husband and wife. Assisted reproduction was widely accepted after established guidelines by Scientific and Religious organizations, which were adopted by concerned authorities in several Muslim nations. These guidelines included a Fatwa from Dar El Iftaa, Cairo (1980) and a Fatwa from the Islamic Fiqh Council, Makkah (1984), the Islamic Organization for Medical Sciences in Kuwait (1983), the Fatwa of International Islamic Fiqh Academy in 1986, and the International Islamic Centre for Population Studies and Research, al. Azhar University. Dr. Yusuf Al-Qardawi said;

“Islam safeguards lineage by prohibiting adultery, fornication, and legal adoption. Thus keep the family lineage unambiguously defined, without any foreign element entering into it”.⁶⁰

It is recommended that in the modern era, Muslims must have knowledge of the *Shariah* ruling on the use of modern or advanced treatments and procedures to get an advantage. It is also suggested that Jurists of Pakistan should also devise a forum that should be an easy approach for everyone to ask *fatawas*.

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