

Reproduction, Infertility and (ARTs): A Study from Islamic and Bio-Medical Perspectives

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Abstract

This article presents a comparative analysis of the biomedical and Islamic view points on the concepts of marriage as an institution of reproduction, infertility and the need and necessity to carry out and put into service contemporary Assisted Reproductive Techniques (ARTs) when the spouses are affected with the full or partial infertility. There is a common connotation that the *Shari'ah* rejects all forms of ARTs but this research nullifies this assumption and gives rational reasons when a technique is rejected and provides reasons too when any such technique is accepted under Islamic law. ARTs like Artificial Insemination, In-Vitro Fertilization (IVF), Donor Eggs and Donor Sperms, Surrogacy and Cloning have been discussed in the light of *Shari'ah* rulings in order to examine the conditions for their permissibility by evaluating their nature and medical process.

Key Words: Reproduction, infertility, ARTs, bio-medical and Islamic concept

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Introduction

This paper examines and analyzes the concepts of reproduction and infertility under biomedical and Islamic perspectives in order to scrutinize and weigh the need and significance of the ARTs in the contemporary social life of the followers of Islam. It also inquires that if any such need truly exists which can permit the followers to opt for such ARTs then what criteria and the requisites would be required to be fulfilled before using them?

Successful Assisted Reproductive Techniques and their Practices in Muslim Majority Countries

Until recent past, treatment of infertility of any kind and hormonal deficiency etc. was possible with the help of medication only. With the passage of time surgery was also introduced for the purpose of treatment. The ethical and religious perspectives of these treatments even, never remained non-controversial and it can be said that those were not accepted by everyone. The assisted reproductive technologies (ARTs) reshaped and modified the whole scenario completely after their emergence. Frankly speaking, amusingly the procreation turned into a mechanical or laboratorial procedure from a private and intimate act between the spouses.¹

ARTs do not stop here and may involve a third or fourth party in the process of reproduction other than the husband and wife turning them a matter of great interest consequently these procedures are a subject of

¹Hossam E. Fadel, "The Islamic viewpoint on new assisted reproductive technologies." *Fordham Urb. LJ* 30 (2002): 147.

interest and burning debate all over the world as they affect many stakeholders including the spouses intending to have their offspring, the religious and medical sectors and social pressure groups propagating the moral and ethical values in the subject.²

The beginning of last quarter of the twentieth century emerged with some vital advances in reproductive health and medicine which were witnessed by the world with mixed emotions like of surprise, hope, anger and fear etc. In 1978, the event of the birth of the first human baby with the help of In-Vitro fertilization (IVF) is considered as one of the most contentious, controversial and at the same time most celebrated incident in the history of reproductive health and medicine particularly in the field of ARTs. It is also said to be one of the most publicized medical landmarks worldwide. According to an estimate, since 1978 the assisted reproductive technologies (ARTs) have been a source for the reproduction of around one million babies all over the world. Some European countries consist of around five percent of their all births through ARTs, according to another assessment. The life of the subfertile and infertile couples is greatly affected by the ARTs. The ones who can avail them see them as a blessing and they give rise to restlessness, pain and anxiety among the couples who have no access to them or cannot afford them. There is another group

²Norhayati Haji Ahmad, "Assisted reproduction-Islamic views on the science of procreation." *EJAIB* 13, no. 2 (2003): 59.

of patients who have become discontented to the ARTs now after an ineffective or unsuccessful attempt of the them.³

While counting on the preferences in public health sector, infertility might not be taken as a vital and important health issue yet it is an important matter of concern in the lives of the ones who are suffering from it. The full or partial infertility not only causes social and psychological miseries for the couples in the form of pressures and complexes but it puts the relationship of the spouses on stake.⁴

Failed marriage is a common result to this misery in most of the cases. Such consequences turn the use of ARTs to be a "human right" according to the think tanks addressing the issue. They base their opinion on the following article from the UN Declaration of Human Rights:

Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family.⁵

As it is already elaborated above that new era has witnessed the progress and advancement in reproductive health and disease cure techniques in the form of ARTs raising the religious, ethical, social, legal and political concerns and arguments. It goes without saying that no other area in

³ Sarah Franklin and Helena Ragoné, eds. *Reproducing reproduction: Kinship, power, and technological innovation* (USA: University of Pennsylvania Press, 1998), 6.

⁴ Gamal I Serour, "Bioethics in artificial reproduction in the Muslim world." *Bioethics* 7, no. 2/3 (1993): 207.

⁵ UN Declaration of Human Rights 1948, Article 16.1.

modern medicine and biology has captured that much magnetism in religious, ethical, legal, social and medical health domains as ARTs.⁶

The ARTs started expanding with a rapid growth since the new millennium started. This expansion is being seen and observed throughout the world without any exception to Muslim majority countries. Among the Muslim majority countries Turkey, Lebanon, Egypt and Iran are considered a hub to this technique with most prominent positions in the reproductive health sector. Turkey is designated to be the "7th biggest IVF Market" in the world.⁷ Egypt turned to take third position in the Middle East to introduce ARTs in 1986 after Saudi Arabia and Jordan. Egypt and Turkey can be taken as the best examples in the Muslim world on the subject of progressive use of ARTs. Following the suit likewise Iran and few other Middle Eastern countries are also providing state subsidized ARTs to their citizens as much as possible. Iran and Lebanon are said to be the "Reproductive Tourists" for the neighboring countries with Sunni majority population as it has been observed that the international borders are crossed by the infertile couples from the countries with Sunni majority population in order to enter in Iran or Lebanon in pursuit of possible available ARTs. As far as the techniques requested/applied by the infertile Muslim couples are concerned it has

⁶ Effy Vayena, Patrick J. Rowe and P. David Griffin, "Current practices and controversies in assisted reproduction: Report of a meeting on medical, ethical and social aspects of assisted reproduction, held at WHO Headquarters in Geneva, Switzerland." (2002): 24.

⁷ Zeynep B Gurtin, "Practitioners as Interface Agents between the Local and the Global: The Localization of IVF in Turkey." Monograph (2012): 28.

been observed that even moderate and liberal infertile Muslims do not prefer to go for the ARTs involving third-party assisted reproduction. But some of them choose them as "last resorts" as some of the *Shī'ah* Muslim jurists permit their use under dire need where there is no other option available or it is impracticable in the given case.⁸

Evaluation of few important ARTs in the light of Islamic Teachings

i) Artificial Insemination

Artificial insemination cannot be considered a new technique in true sense as it has been known and practiced as a solution of infertility since not less than around 200 years. In 1785, a man with hypospadias was reportedly advised by a Scottish surgeon John Hunter, to collect his semen for injecting into his wife's vagina. It can be considered the foremost and successful case of artificial insemination in humans, undoubtedly. Gradually this technique got more refined and advanced after the improvements in the methods of preserving and freezing of the sperms. Artificial insemination is used to provide assistance for conception for the infertile and subfertile couples.⁹

Muslim scholars put forward the condition for the permissibility of the Artificial insemination that it can be allowed only in the situation if the sperms of the husband are injected into his wife and not of any stranger or any third person. Moreover it is also obligatory that this process is carried out during the continuation of the marriage, if a divorce takes place

⁸ Mansour, Abou-Setta and Kamal, "Assisted reproductive technology in Egypt" 3.

⁹Willem Ombelet and Johan Van Robays, "History of human artificial insemination." F, V & V in ObGyn (2010):01.

between the couple or the husband dies this process can never be allowed.¹⁰

ii) In-Vitro Fertilization (IVF)

The technique of in-Vitro fertilization (IVF) was introduced by Steptoe and Edwards in 1978. It has emerged as one of the most effective techniques for the cure of many types of infertility. The IVF technique is unique in the purpose served by it that gives a chance to an infertile or subfertile woman/patient to have her child by using either her own egg or a donor egg and sperm from her husband/partner or from a donor. IVF offers a voluntary procedure intended to have best solution when other cures have been failed or they might turn out to be inappropriate for the concerned patient. IVF process can be elaborated briefly in the words: "a process starting from recovery or suctioning the eggs from the ovary, treating them (fertilizing) in the laboratory and ending by the transfer of the embryos back into the uterus after a few days."

The Muslim scholars tender their permission for the use of IVF technique if no third person is involved in the process by any means but so far *Shari'ah* has not set any standard ruling on the fate of the unused or left over extra eggs. It is essential to devise and compile the guidelines regarding their preservation and future possible use along with other related issues such as the consent of the spouses for their use etc.¹¹

iii) Donor Eggs and Donor Sperms

¹⁰Lars Noah, "Assisted reproductive technologies and the pitfalls of unregulated biomedical innovation." *Fla. L. Rev.* 55 (2003): 603.

¹¹Gamal I. Serour, M. El Ghar and R. T. Mansour, "Infertility: A health problem in the Muslim world." *Population Sciences* 10 (1991): 41-58.

The modern era has observed a rapid growth in the embracing of IVF technique with the use of the donor eggs or donor sperms. This technique has become one of the most imperative choices for the infertile patients in the USA. The popularity of the process can be rightly judged by the estimation that 93 % of US clinics offering IVF also offer Egg donation.

In the prevalent system of IVF market, two principles are being applied regarding the identification of the egg donors. They may be completely or to some extent, known by the recipients or their identity can be anonymous. It depends upon the donors as some donors are easy with showing off their identity and they allow the healthcare institutions to keep it open. This kind of treatment is called "collaborative" or reproduction with the involvement and help of a "third-party."¹²

In 1984 the world witnessed the first reported case of a child birth from "egg donation." That case was based on the procedure where the embryo was transferred after being conceived by the donor woman after insemination with the sperm of the intended father.¹³

It is the general understanding in the agreements between the egg donor or the recipient or the sperm donor or the recipient that the donor's sperms/eggs are to be used only by the particular and identified recipients. In the case of occurrence of any change in the primary agreement, it is mandatory that the proposed change must be informed to

¹² Rene Almeling, "Why do you want to be a donor?: gender and the production of altruism in egg and sperm donation." *New Genetics and Society* 25, no. 2 (2006): 143.

¹³ Kim L. Armour, "An overview of surrogacy around the world." *Nursing for women's health* 16, no. 3 (2012): 234

the donor so that she/he gets to know the identification of the recipient and a chance is given to her/him if she wants to raise any objection regarding grant of her/his, egg/sperm to the recipient.

The intervention of a third party between the spouses in order to participate in the reproductive act turns this technique prohibited in the view of the majority of Sunni jurists. Some scholars give justification behind its prohibition that presence of third party i-e donor of the egg or sperm turn such an act same or similar to forbidden act of adultery, as this act also creates perplexity in the lineage. They opine that such an act would bring disastrous impacts upon the society where the unclear lineage can create social, religious and moral issues. Few serious issues can bring chaos and unrest in the religious and social circles when one may marry his own sister or any other relative in the prohibited degrees without knowing that very fact.¹⁴

But some Shi'ah scholars extend their permissibility to it in the case of dire need, hence they put a limitation that such a technique can only be used when there is no other option and this is the last option available for the spouses. They further opine that if a Muslim couple still wants to choose this technique then the legal status of the father will be given to the "husband" even though he is not the biological father to the child. Same way the "wife" would be considered a legal mother in the case where a donated egg is used, but actually she is not the biological mother to the child.¹⁵

¹⁴ Armour, "An overview of surrogacy around the world", 235

¹⁵ Hossam E Fadel, "Developments in stem cell research and therapeutic cloning: Islamic ethical positions, a review." *Bioethics* 26, no. 3 (2012): 130.

iv) Surrogacy

Surrogacy is the technique of reproduction in which a female carries a child for another couple in a situation when the "wife" owing to any medical reason for instance physical disability is unable to conceive or any such situation where she is unable to give birth to their child naturally.¹⁶

Traditional surrogacy and Gestational surrogacy are two prominent types of surrogacy. The functions of the parties and reproductive techniques used in the process differentiate between both types of surrogacy. When a surrogate mother carries her own egg after being fertilized by the sperm from an intended father, it is called traditional surrogacy.¹⁷ In such a situation, that surrogate mother and the intended father will be the sources of genetical affiliation of the surrogate child. But, but both the egg and the sperm are donated by the intended parents in the gestational form of surrogacy, contrary to this. The job of the surrogate mother is to carry in her womb the ovum (egg) and the sperm given by the intended parents and she only gives birth to the child. Consequently, no genetic affiliation between the child and the surrogate "mother" is established but its lineage is attributed to the donors of the egg and the sperm. No blood relation or lineage is formed between the child and the surrogate mother.¹⁸

Shari'ah denotes Surrogacy "prohibited" when any third party enters into its process. The Arabic word used for the mother is "*Wālidah*", or the "one

¹⁶ Armour, "An overview of surrogacy around the world", 231.

¹⁷ Celia Burrell and Leroy C. Edozien, "Surrogacy in modern obstetric practice." *Elsevier* 19, no. 5, (2014): 273.

¹⁸ Tawfique Al-Mubarak, "Surrogacy and Islam: Between Permissibility and Prohibition." *Islam and Civilisational Renewal (ICR)* 5, no. 2 (2014): 02.

who gives birth." Below mentioned verse of the Quran also identifies the same fact:

"If any men among you divorce their wives by *ẓihār* (calling them mothers), they cannot be their mothers, none can be their mothers except those who gave them birth and in fact they use words (both) iniquitous and false: but truly Allah is one that blots out (sins), and forgives (again and again)."¹⁹

The group of Muslim scholars who reject all types of surrogacy, base their view on the above mentioned verse, deducing the meaning of the motherhood attributed to the female who gives birth to a child only. They opine that: "Mothers are those who give birth to the child."²⁰

But according to the majority of the jurists the type of surrogacy in which the biological mother's egg and biological father's sperm have been used cannot be declared as "prohibited." Their view is also supported by the same verse of the Quran but with a different interpretation highlighting its logical and hidden meanings. They elaborate their view with the logical indication that Islam gives a high rank to the marriage and lineage, likewise the same status of mother is given to the foster mother, then it does not seem possible that the status of a social mother will be snatched by the surrogate mother hence a child belongs to both the ovary and the biological link with the mother. This can also be understood from the following verse of the Quran:

¹⁹ Al-Mujādilah 58:02.

²⁰ Sherifa Zuhur, "Of milk-mothers and sacred bonds: Islam, patriarchy, and new reproductive technologies." *Creighton L. Rev.* 25 (1991): 1725.

"It is He Who has created man from water: then has He established relationships of lineage and marriage: for thy Lord has power (over all things)."²¹

Majority of the Muslim jurists opine that surrogacy cannot be compared with *Zinā*, a prohibited heinous act. Their comparison is not possible because the conditions of *Zinā'* are not fulfilled here as the requisites which make an act capable of denoting as "*Zinā*", are meeting of the private parts, penetration of the male private part into the private part of the female and witnessing such an act by four male witnesses. Observing the process of surrogacy, it becomes clear that in the case of the surrogacy at least first two conditions are not present. The insertion of sperm into the womb of the mother/wife through any medical procedure cannot be called the act of *Zinā*. Consequently, it is not justified to put into operation the religious, legal and social consequences of *Zinā* on surrogacy.²²

V) Cloning

Cloning is the asexual method of reproduction by which "a genetically identical copy of a certain plant, animal or bacteria is produced." The word clone is derived from the Greek words "Klonos" or "Klwn" which mean "branch" or "twig." While applying this technique the genetically identical clones of the fruits and vegetables with the desirable qualities and even quantities, are produced.²³

²¹ Al-Furqān 25:54.

²² Samia Maqbool Niazi, "Islamic Law and the Surrogate Mother." *Islamabad Law Review* 1, no. 1 (2014): 25.

²³ Allen D Verhey, "Cloning: Revisiting an old debate." *Kennedy Institute of Ethics Journal* 4, no. 3 (1994): 227.

Human Cloning has been a topic of vast discussion since its conception. Two main kinds of this technique are the Therapeutic and Reproductive. Both of these techniques differ with respect to their scope and modes of application. In the recent past some of the domestic pets, endangered species, agricultural animals and primates have been cloned by using reproductive cloning technique. Despite the fact that it has not been practiced over humans so far yet, many countries in world have banned this type of research declaring it as "illegal owing to the reservations and objections raised by the religious and scientific communities. On the other hand therapeutic cloning has some promising uses which make it acceptable in religious, social and moral circles. Organ transplantation and Disease Cure are the two important and significant possible usages making it feasible and tolerable among all stakeholders.²⁴

The Muslim jurists and medical practitioners are not unaware of this technique and they have been addressing it by "*Fatāwā*" (legal verdicts). According to which there is no room for the reproductive cloning to be performed and allowed but therapeutic cloning can be performed keeping in view the limitations imposed by *Shari'ah* in this regard.

Conclusion

Shari'ah addresses every aspect of life starting from the personal life of the followers where they are concerned about performing their acts and deeds according to their religion to their social, professional and economic affair. Being complete code of life Islam set forth the rules for family life and reproduction where it gives full respect to the institution of marriage as a

²⁴Finn Bowring, "Therapeutic and reproductive cloning: a critique." *Social science & medicine* 58, no. 2 (2004): 405.

source of reproduction and encourages its followers to take every step making them capable of having their own offspring but keeping in view the sanctity of *Nikāh* which is a private relation between the spouses. The cure of infertility is obligatory to seek hence the firm belief that Allah is the only creator and infertility or the blessing of one's own offspring both situations are under His complete domain and power. The lineage can only be attributed towards the blood relation. While the assisted reproduction techniques are concerned one must keep it in mind that every treatment/act of reproduction involving any other person other than the spouses may amount to a prohibited act under *Sharī'ah* according to majority of Muslim jurists. Likewise the consent of the spouses and continuation of their marriage also set the criteria for their permissibility under the *Sharī'ah* even if no third or fourth party is involved in such a technique of reproduction. The purpose behind such a rule is to protect and safeguard the sanctity of the family life, the basic unit in a society and theory of the "Objectives of *Sharī'ah*" also acknowledges and safeguards the sanctity of family life.