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An Overview of Islamic Law Position on In Vitro Fertilization

By

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Abstract

Marriage is a universal phenomenon which is recognised all over the world. Among the purposes of marriage is procreation. As a result of one reason or the other, some couples including Muslim couples face challenges which include but are not limited to infertility or lack of conception. Some couples, in their attempt to overcome this problem opt for In vitro Fertilization (IVF) procedure. Assisted Reproductive Technology as a scientific breakthrough in human reproduction began in 1978 when the first successful baby delivery occurred via IVF. This development occasioned a great change in the societal notion of Human reproduction, the concept of parenthood and family. From that time, much advancement continues to recrudescence from time to time on the procedure in order to achieve science's aspiration to cure infertility and other related problems. As at July 2018, more than 8 million babies have been birthed through IVF technology worldwide. Due to the growing rate of acceptance of the use of technology in human reproduction, it is apposite that an analysis of IVF procedure as a form of ART is carried out under Islamic Law. This is necessary because religion plays a strong role in the society, the growing Muslim population in the world and that Islamic Law is a divine law which takes seriously the concept of family values, family and kin relationship. This paper seeks to examine the position of Shari'ah on the application of Assisted Reproductive Technologies particularly the IVF in relation to the Muslim Community world-wide. The paper will employ qualitative/doctrinal approach in analysing the position of Islamic Law on the subject matter under consideration. This work will consider the various arguments/submissions of the Muslim scholars all over the world viz-a-viz the textual provisions of the Qur'an and Hadith of the holy Prophet Muhammad (S.A.W). The work will make necessary recommendations on the current position of Shari'ah on the subject matter and proffer relevant suggestions on the way forward.

Introduction

Reproduction is recognised under Islamic law as part of the essential benefits of this world. This is strengthened through the protection of family lineage as one of the basic objectives of Shari'a (*maqassid-Shari'a*)¹. This is illustrated with the Qur'anic verse:

*Wealth and children are allurements of the life of this world. But the good righteous deeds are better with your Lord in reward and better in hope*².

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¹ There are five objectives of Islamic law: preservation of religion, preservation of life, preservation of progeny/family, preservation of intellect, preservation of property. See Zaydan A, *Al-madkhal li-dirasat al-shari'a al-islamiya*. (Maktabat al-Quds, Baghdad, 1981)

² Quran Chapter 18 (Suratul Kahf) verse 46.

O mankind, indeed, we created you from a man and woman. We made you branches and tribes so that you may know each other.

Infertility is a known phenomenon globally which prevents conception and affects one in seven couples globally³. Different efforts are usually carried out by couples to cure infertility; however, new scientific inventions have been made on this ailment which are called Assisted Reproductive Technologies (ARTs). **In Vitro Fertilization (IVF)** is one of these procedures and has been proven to be successful in the treatment of infertility.

Islamic law is an embodiment of rules and regulations based on Allah's commandments governing the total actions of Muslims whether spiritual or social. This law is expected as a duty to be applied in all aspects of human life—in his relationship to God, his fellow Muslims and non-Muslims alike. As a result of its uniqueness and universal nature, it has been able to address issue(s) as they developed since the death of the prophet Muhammad (S.A.W).

Islam places utmost priority on the protection of the family unit and the preservation of family lineage which is one of the five foundational goals of *maqassid Shari'ah* thus placing emphasis on the entrenchment of deep religious values on biologically based kinship, family life and parenthood⁵. The rapid increase in infertility across the world and delayed pregnancies has led to the development of IVF in the medical field. Research by the World Health Organisation (WHO) estimated that in 2010, 48.5 million couples worldwide were unable to have a child⁶ and the estimation of infertility in the developing countries is placed at 25% amongst couples as a result of many factors like late marriages, gynaecological issues, incidence of obesity etc⁷.

IVF is the process of fertilizing an embryo in a glass⁸. It is the method in which a married couple who is unable to conceive a child normally can be helped to have one. It can be otherwise called test tube babies. The procedure involves fertilization between the egg and the sperm via the use of test tube in a Medical treatment to allow the sperm of the husband to meet the egg of the wife outside the woman's womb.⁹ After this, the fertilized embryo is placed in the woman's womb through a Medical process to fully develop.

³ More than 70 million couples suffer from infertility globally, although, its negative consequences are mostly in a higher degree in developing countries. Biotin J. Et al, 'International Estimates of Infertility Prevalence and Treatment-Seeking: Potential Need and Demand for Infertility Medical Care', (2007) 22 Human Reproduction pp. 1506-1512.

⁴ 631 A.H till present. The abbreviation 'A.H.' stands for 'After Hijrah' or in its Latin form, "Anno Hegirae". It is used to refer to the year the Prophet Muhammad and his followers migrated from Mecca to Yathrib (now known as Medina). This event is used to mark the beginning of the Islamic calendar. < <http://peopleofoureyverydaylife.com/ah-stand-islam-7553.html> > accessed on 22nd June, 2019

⁵ Opoku J.K and Addai-Mensah P, 'A Comparative Analysis of In-vitro Fertilization from the Christian and Islamic Point of View', (2014) Vol.2, No.7 Global Journal of Arts Humanities and Social Sciences, p.55 < <http://www.eajournals.org/wp-content/uploads/A-Comparative-Analysis-of-In-Vitro-Fertilization-from-the-Christian-and-Islamic-Point-Of-View.pdf> > accessed on 22nd June 2019

⁶ Warren-Gash C, 'Worldwide infertility rates unchanged in 20 years says World Health Organisation' < http://www.bionews.org.uk/page_232839.asp > accessed on 21st December, 2018. Based on Demographic and Health Surveys from 1990 that was completed in collaboration with W.H.O in 2004, the result of the evaluation stated that One in every four couples in developing countries had been found to be affected by infertility.

⁷ 'Infertility' < <http://www.who.int/reproductivehealth/topics/infertility/countryperspective/en/> > accessed on 21st December, 2018.

⁸ Ahmed Z.B, 'The Concept of In vitro Fertilization and Egg Donation: An Islamic Point of View', (2014) Vol. 2 (4) Journal of Education, Arts and Humanities, pp. 54-58 < www.watchpub.org/jeah/issues/2014/december/pdf/Ahmed.pdf > accessed on 12th June, 2019

⁹ Zallum, *Islamic Verdict on Cloning, Human Organ Transplantation, Abortion, Test Tube babies, life support*, (Al-Khilafah Publishers, London, 1999)

IVF as an aspect of Assisted Reproductive Healthcare is gaining wide acceptance in both Muslim States and Non-Muslim states where Muslims are residents. The bio-medical technology which been established as successful a safe means of helping infertile couples improve their chances of having a child¹⁰ has been seen and accepted as a cure for overcoming infertility. The acceptance of IVF by Muslims is premised on the Hadith of the prophet that says:

*Seek remedy of your illnesses; for Allah has never created an illness unless he has also created a cure for it, save the illness of old age.*¹¹

IVF is one of the contemporary issues in the area of medicine which is poised to have a market growth globally in the year 2016-2022¹² due to the increase in infertility all over the world especially in developing countries, delay in conception, the growing social acceptance of IVF, improvements in the infrastructural healthcare facilities and the increase in its awareness.

As a result of the above, it is foreseen that the widespread of IVF and the openness of the society to its use, will result in many Muslims whether in Islamic states or not, to want to participate in the IVF procedure. It is therefore pertinent that a firm stance be taken concerning the position of Islamic law on IVF and its related issues

In the light of this, recourse shall be made to Islamic conference resolutions on IVF together with individual scholars' opinions used to arrive at the agreed Islamic law regulations on In vitro fertilisation using the standards in the maqassid Shari'a and relevant injunctions from the Qur'an and Hadith.

Concept of Infertility Under Islamic Law

Literally, infertility means '*al- 'iqm*' which also symbolises drought, aridity and dry-rot¹³. Other words which also represent infertility are *shahahah*, *qiht*, *ghayr makhsab*¹⁴. Infertility can also be said to mean a state of barrenness i.e. being unable to produce offspring¹⁵. This word may be used in human relationship, determining of the quality of a land/soil or for animals or plants.

In this paper, Infertility is intended to be in relation to human reproduction. The Islamic perspective of infertility is based on the general principle of Islamic law which indicates that whatever happens to a Muslim is based on Allah's will¹⁶. This is provided in the Qur'an thus:

¹⁰ PR Newswire article on 'Asia Pacific Infertility (Testing And Treatment) Market Forecast 2016-2022 (London, Dec. 19, 2016)' < http://finance.yahoo.com/news/asia-pacific-infertility-testing-treatment-194800269.html;_ylt=A0LEViv3jFpY6_0AG3YPxQt;_ylu=X3oDMTByMjB0aG5zBGNvbG8DYmYxBHBvcwMxBHJ0aWQDBHNIYwNzYw--> accessed on 21st June, 2019

¹¹ Alaro A.A, 'Assisted Reproductive Technology (ART): The Islamic Law Perspective', (2013) NILJ (Civil) pp. 145-158

¹² PR Newswire article on 'Asia Pacific Infertility (Testing And Treatment) Market Forecast 2016-2022 (London, Dec. 19, 2016)' < http://finance.yahoo.com/news/asia-pacific-infertility-testing-treatment-194800269.html;_ylt=A0LEViv3jFpY6_0AG3YPxQt;_ylu=X3oDMTByMjB0aG5zBGNvbG8DYmYxBHBvcwMxBHJ0aWQDBHNIYwNzYw--> accessed on 21st June, 2019

¹³ Google Translate, 'Infertility' < <https://translate.google.com.ng/m/translate?ie=UTF8&tl=ar&q=infertility#en/ar/infertility> > accessed on 24th June, 2019

¹⁴ *Ibid.*,

¹⁵ Advanced English Dictionary, < <http://wordnet.princeton.edu> > accessed on 24th June, 2019; Wordnik, 'Infertility', < <http://www.wordnik.com/words/infertility> > accessed on 24th June, 2019

¹⁶ Qur'an chapter 22 (Suratul al-Hajj) verse 5

To Allah belongs the dominion of the heavens and the earth. He creates what He wills (and plans). He bestows (children) male or female according to His Will (and plan), or He bestows both males and females, and He leaves barren whom He will: for He is full of Knowledge and Power.¹⁷

The commentary on this verse by Sayyid Abdul Ala Maududi in his commentary¹⁸ states that the one whom Allah has made barren could not have any children by any device, medicine or treatment thus attributing the absolute power of providing children for others to Allah.

From this, it can be deduced that Islamic law views infertility as a state of barrenness and the inability to have offspring. It is to be noted that for infertility as a disease to be treated by the means of assisted reproduction, it is only recognised in a marriage after the failure to conceive. This is because the only avenue where sexual reproduction is permitted is in a valid marriage recognised under Islamic family law. Therefore, infertility under Islamic law is the inability to have offspring by a couple in a marriage carried out in line with the regulations of Islamic Law.

Verses that stress this significance include:

And it is He who has created man from water, and has appointed for him kindred by blood, and kindred by marriage. And your Lord is ever All-Powerful (to do what He wills).¹⁹

And;

Allah made your wives from yourselves. He made children and grandchildren from your wives and provided for you sustenance of the best...²⁰

Muslims are however enjoined to search for knowledge when things become difficult and strive through prayers and good deeds.²¹ The prophet said:

Seek remedy of your illnesses; for Allah has never created an illness unless he has also created a cure for it, save the illness of old age.²²

Islamic Law has no differences in infertility or sterility. They are both seen as a state of childlessness which is looked upon for Allah's intervention. This can be elucidated in the

¹⁷ Quran chapter 42 (Suratul as-Shura) verse 49-50

¹⁸ <www.englishtafsir.com/quran/42/index.html> accessed on 24th June, 2019

¹⁹ Quran chapter 25 (Surah Al-Furqan) verse 54

²⁰ Quran chapter 16 (Suratul an-Nahl) verse 72

²¹ Ahmed Z.B, 'The Concept of In Vitro Fertilization and Egg Donation: an Islamic Point of View', (2014) Vol. 2 (4). Journal of Education, Arts and Humanities, pp. 54-58 <www.watchpub.org/jeah/issues/2014/december/pdf/Ahmed.pdf> accessed on 22nd June, 2019

²² Alaro A.A, 'Assisted Reproductive Technology (ART): The Islamic Law Perspective', (2013) NILJ (Civil) pp. 145-158

historical examples of infertility in the Qur'an. Prominent of these stories are those of prophet Ibrahim and Zachariyyah (peace of Allah be upon them)²³. Prophet's Ibrahim story is mentioned in Qur'an 11 (Suratul Hud) verse 69-74, Qur'an 37 (Suratul as-saffat) verse 100-101, Qur'an 51 (Suratul adh-dhariyat) verse 28-30.

Prophet Ibrahim had a wife named Sarah and they had both been having troubles conceiving a child till they reached old age. The prophet would always pray to his Lord:

*"Oh, my Lord! Grant me a righteous (son)..."*²⁴

His prayer became answered when Allah sent him and his wife a message²⁵ through the angels that he would bear a son. Sarah laughed at the message because she was already past her menopause stage considering their old age. This case of infertility ascertained the fact that treatment for infertility under Islamic law is within Allah's power and that age as a factor facilitating infertility is not an end in Islam. This event was mentioned twice²⁶ in the Qur'an thereby, cementing the importance of this fact in reproduction.

*...And they (angels) gave him (Ibrahim) glad tidings of a son endowed with knowledge. But his wife came forward clamouring; she smote her forehead and said: A barren old woman! They said: Even so has thy Lord spoken and He is full of wisdom and knowledge.*²⁷

Though the Qur'an does not narrate the story of Sarah, it is complemented with the Hadith narrations²⁸. She was placed around the age of 90 years old and prophet Ibrahim around 100 years²⁹. Compared to the contemporary times, a woman at 90 years would have been unable to conceive which made Sarah laugh in astonishment when the news was delivered to her because she had given up hope of ever having a child. This led to her giving Hajar to her husband so as not to deny him from having children which led to the birth of Ismail³⁰.

The story of Zachariyyah (peace of Allah be with him) and his wife, Ishba is another infertility miracle in the Qur'an. The Qur'an stated in Qur'an 3 verse 38 (Suratul Imran) that he prayed to Allah to be granted a child.

*O, my Lord! Grant unto me from you progeny that is pure. For you are He that hears prayers*³¹

²³ Hossam E. F, 'Islamic Shari' ah Rulings on New Reproductive Choices', (2005) Vol. 37 JIMA pp. 70-77; 'Infertility in the Qur'an' < www.angelfire.com/la/IslamicView/Quran1.html > accessed on 14th March, 2019;

²⁴ Qur'an chapter 37 (Suratul as-Saffat) verse 100

²⁵ Qur'an 37 (Suratul as-Saffat) verse 101

²⁶ Quran chapter 11 (Suratul Hud) verses 69-74 and Quran chapter 51 (Suratul adh-Dhariyat) verses 28-30.

²⁷ Qur'an chapter 51 (Suratul adh-Dhariyat) verses 28-30

²⁸ Ibrahim (Abraham) - Hadith About Abraham , Sarah, and Hajar < [http://www.alim.org/library/biography/stories/content/SOP/18/6/Ibrahim%20\(Abraham\)/Hadith%20About%20Abraham%20Sarah%20and%20Hajar](http://www.alim.org/library/biography/stories/content/SOP/18/6/Ibrahim%20(Abraham)/Hadith%20About%20Abraham%20Sarah%20and%20Hajar) > accessed on 26th March, 2019; Stories of the prophet by Ibn Kathir < <https://www.kalamullah.com/Books/Stories%20Of%20The%20Prophets%20By%20Ibn%20Kathir.pdf> > accessed on 5th March, 2019

²⁹ Ibid,

³⁰ Ibid,

³¹ Quran chapter 19 (Suratul Maryam) verses 2-4 also states: (This is) a recital of the Mercy of thy Lord to His servant Zakariya. Behold! he cried to his Lord in secret, Praying: "O my Lord! Infirm indeed are my bones, and the hair of my head doth glisten with grey: but never am I unblessed, O my Lord, in my prayer to Thee!

Like Ibrahim (peace of Allah be with him), Zachariah also doubted the message³² when it came to him that he would have a son.

*He (Zachariyyah) asked, "my God, how can I have a child, when the old age has come to me and my wife is in the barren stage?" God said, "Thus Allah will do what He wants."*³³

The message came into fruition which led to the birth of Yahya (peace of Allah be with him).

*And (remember) Zachariyyah, when he cried to his Lord: "O my Lord! Leave me not without offspring, though thou art the best of inheritors." So, We listened to him; and We granted him Yahya: We cured his wife's (Barrenness) for him. These (three) were ever quick in emulation in good works; they used to call on Us with love and reverence, and humble themselves before Us.*³⁴

Another notable event is seen during the time of the prophet Muhammad (SAW). The prophet's wife, Aisha (peace of Allah be with her), was also barren and did not have a child during her marriage till her death. The wife of pharaoh (Ashiah) did not also have a child³⁵. And presently, there are numerous Muslim women who are facing the challenges of infertility³⁶.

Coming to the crux of the matter, the above occurrences in history of infertility under the Islamic law as narrated in the Qur'an and Hadith indicates that infertility situations have always been experienced in Islamic history. Muslims have always been enjoined to seek treatment for their ailments except death and as well seek for Allah's help to ensure success. Since Infertility is also a disease, the approach used since the time of the prophets should also be employed which is seeking all possible medical interventions to achieve a pregnancy and a biological child of their own so far as they do not transgress the limits of Allah i.e. the Islamic principles of Law³⁷. Though, there is the possibility that after numerous attempts, positive results may not be realised, Islam still encourages that efforts be made.³⁸

³² Qur'an chapter 3 (Suratul al-Imran) verse 39

³³ Qur'an chapter 3 (Suratul al-Imran) verse 40

³⁴ Qur'an chapter 21 (Suratul al-Anbiya) verses 89-90

³⁵ Ashiah was mentioned in Quran chapter 66 (Suratul at-Tahrim) verse 11 as a virtuous woman of faith and she never conceived a child till she was killed by her husband. "And Allah sets forth, as an example to those who believe the wife of Pharaoh: Behold she said: "O my Lord! Build for me, in nearness to Thee, a mansion in the Garden, and save me from Pharaoh and his doings, and save me from those that do wrong";

³⁶ Inhorn M.C., et al., 'Infertility and Assisted Reproduction in the Muslim Middle East: Social, Religious, and Resource Considerations', (2012) FVV in ObGyn, Monograph pp. 24-29 < www.fvvo.be/assets/265/04-Inhornetal.pdf > accessed on 22nd June, 2019; Hamdan A, 'Infertility: the Struggle to Conceive - I' < www.islamweb.net/womane/nindex.php?page=readart&id=149490 > accessed on 24th June, 2019; Norhayati H. A, 'Assisted Reproduction - Islamic Views on the Science of Procreation', (2003) 13 Eubios Journal of Asian and International Bioethics pp. 59-60 available at < <http://www.eubios.info/EJ132/ej132i.htm> > accessed on 24th June, 2019; Two-tier Fertility Decline in Nigeria: The Growing Discrepancy between Muslims and Christians, < <http://paa2015.princeton.edu/uploads/151197> > accessed on 5th July, 2019

³⁷ Serour, G.I, 'Reproductive Choice; A Muslim Perspective' In: Harris J and Holm S (eds.), *The Future of Human Reproduction: Ethics, Choice and Regulation* (Caledonian Press, 1998) as cited in Norhayati H. A, 'Assisted Reproduction - Islamic Views on the Science of Procreation', Ibid; Eskandarani H, *Assisted Reproductive Technology: State of the ART* (Al-Wafa Printing Press, Saudi Arabia, 1996)

³⁸ Ahmed Z.B, 'The Concept of In Vitro Fertilization and Egg Donation: an Islamic Point of View', (2014) Vol. 2 (4), *Journal of Education, Arts and Humanities*, p. 56 < www.watchpub.org/jeah/issues/2014/december/pdf/Ahmed.pdf > accessed on 22nd June, 2019; Hossam E. F, 'The Islamic Viewpoint on New Assisted Reproductive Technologies', (2002) Vol. 30, Issue 1 *Fordham Urban Law Journal*, Article 8. < <http://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=1851&context=ulj> > accessed on 5th July, 2019; Kaufmann E, 'Islamism, Religiosity and Fertility in the Muslim World', < <http://www.aneps.net/RD/uploads/1-1-Islamismfertilitypaper.pdf> > accessed on 24th June, 2019; 'Infertility in the light of Qur'an' < <http://www.angelfire.com/la/IslamicView/> > accessed on 24th June, 2019.

“...He leaves barren whom He wills”³⁹

It is believed that where a Muslim faces any difficulty in life in which infertility is inclusive; his sins are reduced serving as expiation for the pains⁴⁰. Muslims are however enjoined to be steadfast in their prayers to Allah and grateful as a believer despite their various circumstances which may be a trial that would eventually pass⁴¹. Abu Yahya Suhaib bin Sinan (May Allah be pleased with him) reported that the prophet Muhammad (S.A.W.) said:

Wonderful is the case of a believer - there is good for him in everything, and this is only for the believer. If he experiences a blessing, he is grateful to Allah - which is good for him; and if he experiences an adversity, he is patient - which is also good for him.
[Muslim]⁴²

Islamic Law Perspectives and Regulations n In Vitro Fertilization

To decipher the Islamic perspective on IVF, the first recourse is usually made to the primary sources of Islamic Law i.e. the Qur'an and the Sunnah; then, the other secondary sources like the Ijma', qiyas, istihsan, maslaha al mursalah etc. However, IVF as a medical issue is not explicitly covered under the primary sources of Islamic law due to it being a technological innovation. This has led resort to be made to the secondary sources which involves the scrutinizing of many issues by Islamic legal scholars in line with basic principles of Shari'a imbedded in the primary sources. These scrutinies would take the analysis of the pros and cons of the process leading to possibility of differences based on varying views and individual perception of the issue. The processes involved in IVF have often led to a lot of controversies and debate among Muslim scholars. Muslim jurists were able to make a convergence of ideas and arrive at a conclusion on the Islamic law position of In vitro fertilisation. These resolutions will be discussed below:

Before arriving at the Islamic Law regulations on IVF, the pros and cons of this technological innovation were weighed by the scholars which were eventually made into a legal description. This shall be analysed by recourse to resolutions and recommendations issued in Islamic conferences of the fiqh council and individual opinions of Islamic scholars on the discourse.

The Islamic Fiqh Academy in the year 1985-2000 had series of sessions and deliberations on many contemporary Islamic and biomedical issues, IVF inclusive. Having made series of research and studies on the subject matter, the Ummah's scholars with serious collective efforts arrived at logical conclusions based on Shari'a principles that would serve as guide in the activities of Muslims.

³⁹ Quran chapter 42 (Suratul as-Shura) verse 50

⁴⁰ The Prophet, (S.A.W.), said: Whatever trouble, illness, anxiety, grief, pain or sorrow afflicts a Muslim even if it is the pricking of a thorn - Allah removes in its places some of his sins. (Narrated Abu Sa'id Al-Khudri and Abu Huraira)

< <https://sunnah.com/urn/52930> > accessed on 24th June, 2019.

⁴¹ Allah Says in Suratul Baqarah verse 152 that: So remember me; I will remember you. And be grateful to Me and do not deny me. <<http://www.islamweb.net/womane/nindex.php?page=readart&id=149491>> accessed on 24th June, 2019

⁴² < <https://sunnah.com/riyadussaliheen/1/27> > accessed on 4th July 2019

In the year 1985, between 22nd and 28th December, the Council of Islamic Fiqh Academy in one of its sessions held in Jeddah in the Kingdom of Saudi Arabia reviewed studies on the process of In Vitro Fertilisation: medical and legal aspects alike as presented by experienced jurists and physicians. After the presentations, the Islamic law ruling was not resolved but rather postponed for more thorough findings on the subject matter before any ruling is to be made⁴⁵. This session was reassembled on this issue for decisions to be made between 11th to 16th October 1986 (8 to 13 Safar 1407 H) in Amman, Hashemite Kingdom of Jordan⁴⁶.

The Council of Islamic Fiqh Academy found out that there are seven illustrious methods used in the contemporary times for artificial insemination which involves in vitro fertilisation. Five of the methods were decided to be 'forbidden and absolutely prohibited' due to its attached foreseen and unforeseen consequences that could arise such as confusion about parenthood, loss of motherhood and other prohibited matters⁴⁵. They are reproduced as follows:

- 1) Where fertilisation takes place in vitro between the semen of the husband and the ovum of another woman (not his wife) and the fertilised ovum is then placed in the wife's womb⁴⁶;
- 2) Where fertilisation takes place in vitro between the semen of another man (not the husband) and the ovum of the wife and the fertilised ovum is then placed in the wife's womb⁴⁷;
- 3) Where fertilisation takes place in vitro between the semen of the husband and the ovum of the wife and the fertilised ovum is then placed in the womb of another woman⁴⁸;
- 4) Where fertilisation takes place in vitro between the semen of a man (not the husband) and the ovum of another woman (not the wife) and the fertilised ovum is then placed in another woman's (a volunteer or contractor) womb⁴⁹;
- 5) Where fertilisation takes place in vitro between the semen of the husband and the ovum of the wife and the fertilised ovum is then placed in the womb of the second wife⁵⁰;

⁴⁵ Resolutions and recommendations of the Council of Islamic Fiqh Academy, 1985-2009, Resolution n° 5 (5/2), Concerning Test-Tube Babies, p. 8, <<https://zulkiflihasan.files.wordpress.com/2009/12/majma-fiqh.pdf>> accessed on 30th June, 2019; Islamic Fiqh Academy (Jeddah), Resolutions and recommendations of the Council of Islamic Fiqh Academy: 1985-2000-Jeddah <<https://uaelaws.files.wordpress.com/2012/05/resolutions-and-recommendations-of-the-council-of-the-islamic-fiqh-academy.pdf>> accessed on 25th June, 2019.

⁴⁶ Resolutions and recommendations of the Council of Islamic Fiqh Academy, 1985-2009, Resolution N° 16 (4-3), concerning Test-Tube Babies, pp. 28-29.

⁴⁷ Ibid.

⁴⁸ This method of in vitro fertilisation involves egg donation which involves bringing a third party into the marital union hence, its prohibition. For more explanation, See Nasirudeen M. A, 'Critical analysis of Artificial Human Reproduction', pp. 69-76 <<http://kubanni.abu.edu.ng:8080/jspui/bitstream/123456789/8346/1/A%20CRITICAL%20ANALYSIS%20OF%20ARTIFICIAL%20HUMAN%20REPRODUCTION.pdf>> accessed on 13th June, 2019.

⁴⁹ This involves sperm donation i.e. third-party interference. For more explanation, see Nasirudeen M. A, 'Critical Analysis of Artificial Human Reproduction' Ibid, note 46

⁵⁰ This is otherwise called ivf-surrogacy. For more explanation, see Nasirudeen M. A, 'Critical analysis of Artificial Human Reproduction' Ibid, note 46

⁵¹ This is a more complicated issue with the involvement of five persons in the process. It involves full gamete donation and surrogacy host motherhood. For more explanation, see Nasirudeen M. A, 'Critical analysis of Artificial Human Reproduction', Ibid

⁵² For more explanation, see Nasirudeen M. A, 'Critical analysis of Artificial Human Reproduction', Ibid,

- 1) Two methods were, however, accepted by the council with conditions attached that it be resorted to in cases of necessity with all required precautions taken⁵¹. Therefore, the means through which in vitro fertilisation is permissible in Islamic law is in these two forms: Where fertilisation takes place *in vitro*⁵² between the semen of the husband and the ovum of the wife and the fertilised ovum is then placed in the womb of the same wife;
- 2) Where the husband's semen is taken and injected in the womb or uterus of the wife for *in vivo*⁵³ fertilisation. This method is referred to as ICSI (intracytoplasmic sperm injection) which is one of the forms of IVF advanced.

These two methods given preference and permissibility over the others are precise and in close similitude to the natural method of procreation and fertilisation with a rather positive impact on the family unit serving as a solution to the problem of infertility whilst protecting lineage as against the other methods, though, proffering solutions but with problems attached⁵⁴.

It can be deduced from the foregoing, that the Islamic regulation on In vitro fertilisation is that the procedures of IVF is permissible so far it is within the following limits:

- 1) Carried out between a man and his wife in an existing marital union
- 2) Non-involvement of third parties whether through physical use of body or organs

Exceeding these limits can be considered as a transgression against Allah and Shari'a laws. This premonition has been stated by Allah in Qur'an 23 verse 7

Indeed, those who sought other means beyond this (i.e. exceed those limits) are the transgressors.

The Muslim World League of Islamic Fiqh Council also made reviews on artificial insemination and test tube babies in its fifth session held between 2nd and 10th February, 1982⁵⁵. No decisions were made due to the intricacies and delicacy of the issue in the religious point of view on the family and morals of the society as could already be seen in the western societies. The council decided to weigh the permissibility of the process in line with legitimacy and illegitimacy, rules of need and emergency, regulations of lineage and doubtfulness, the marital bed, pregnant woman's sexual relationship with person other than the husband, rules of Ida, purity of womb, sanctity of marriage, the rules of punishment in Islam through Hadd or Ta'zeer as there involved aspects which are not permissible in the

⁵¹ These precautions insinuated by the jurists point to the use of the method by those who are infertile and that rules governing body exposure, cryopreservation, spare embryos etc be followed as discussed above. Another precaution that has been concluded by the Islamic Scholars (Ulamas) is on the insemination of the gamete in the woman. Three ways were suggested to be followed: That the process be carried out by a female Muslim doctor or by a male Muslim doctor in the presence of the woman's next of kin or mahram or by a non-Muslim doctor in the presence of a next of kin/ mahram. See Ahmed Z.B., 'The concept of In Vitro Fertilization and Egg Donation: an Islamic Point of View', (2014) Vol. 2 (4), Journal of Education, Arts and Humanities, pp. 54-58 < www.watchpub.org/jeah/issues/2014/december/pdf/Ahmed.pdf > accessed on 22nd June, 2019; Ruling on in-vitro fertilisation (IVF) from < www.islamqa.info/98604 > accessed on 12th June, 2019.

⁵² means fertilization will take place in an artificial environment outside the wife

⁵³ means the process of fertilization is carried out in the wife

⁵⁴ Sayyid M. M., 'Children by IVF and Surrogacy: A Juristic Study on their Laws of Inheritance', (2013), Vol. 42 (Nos. 5 & 6) The Muslim World league Journal, pp. 29-38.

⁵⁵ Muslim World League Islamic Fiqh Council, Resolutions of Islamic Fiqh Council Makkah Mukarramah From 1st to 18th Sessions During 1398-1427H (1977-2006), pp. 129-130 < <http://themwl.org/downloads/Resolutions-of-Islamic-Fiqh-Council-1.pdf> > accessed on 30th June, 2019

religion such as the forms of internal insemination in woman and external insemination in the test-tube, then its plantation in womb⁵⁶.

At its 7th session and fifth resolution, a decision was made. Like the Islamic fiqh academy, the Islamic fiqh council identified seven methods of artificial insemination in vitro that were already in practice in Europe, the United States and other Middle Eastern countries. These methods were already in rampant use, by both married and unmarried men and women in civilised societies with dire need of a legal intervention. General principles were pronounced stipulating necessity as an exception for the exposure of a woman's body to a non-mahram and infertility was put in the category with limitations of exposure to the needed parts at the time of diagnosis and treatment⁵⁷.

It is to be re-iterated that the permissible methods by the Islamic Fiqh Academy were also accepted by the Islamic Fiqh Council with the exception of the second wife carrying the ovum for her co-wife which was permitted by the Islamic Fiqh Council provided it is out of her free will and there is no other alternative⁵⁸. Also, the other methods were declared prohibited in Shari'a relying on the same reasons put forward by the Islamic Fiqh Academy⁵⁹.

Apart from the resolutions of the Council of Islamic Fiqh Academy and the Islamic Fiqh Council, The Islamic Organization for Medical Science (IOMS) in the quest to regulate the use and administration of IVF held seminars to determine primal rules and regulations for the procedure to ensure the protection of the sanctity of marriage⁶⁰. The conclusion arrived at is like that of the council⁶¹ though with much precision and specification of details. The rules are: That

- The rights of the legal husband and wife must not be alienated by any third party.
- The procedure must be applied only when the marriage contract is valid and substantive (valid).
- Excess embryo continues to be the property of the couple concerned and can only be used with their consent.
- All participating staff in IVF programmes must have highest standard of professionalism, trustworthiness, integrity and responsibility.

⁵⁶ *Ibid.*

⁵⁷ Muslim World League Islamic Fiqh Council, Resolutions of Islamic Fiqh Council Makkah Mukarramah from 1st to 18th Sessions During 1398-1427H (1977-2006), p. 193.

⁵⁸ Muslim World League Islamic Fiqh Council, Resolutions of Islamic Fiqh Council Makkah Mukarramah from 1st to 18th Sessions During 1398-1427H (1977-2006), p. 195.

⁵⁹ *Ibid.*

⁶⁰ International Conference on Islamic Code of Medical Ethics, The Arguments of Islamic Law Rulings on Recent Medical Issues Based on the Recommendations of IOMS, <http://islamset.net/ioms/code2004/Islamic_law_rulings.html> accessed on 14th June, 2019; The Islamic Organization for Medical Sciences (IOMS) was made in Kuwait in 1983.

⁶¹ *Ibid.*

- Not more than three (3) eggs or embryos can be implanted in a woman in any one cycle.
- Age of the recipient should be between the ages of 35-45.
- There should be acts of legislation to prevent the abuse of IVF procedures and other related activities.
- Embryo research for therapeutic purposes should be done with prior consent of the couple undergoing treatment.
- In attempting to obtain the needed necessities of life, one should not contradict the guidelines of Islamic Law (Shari'ah)⁶²

On this note, aside from the above discussed rules and regulations, any other means used in the use of IVF is forbidden in Islam. Where the above procedures are carried out and the result is still negative, then, it is advised that the couples accept the state of infertility and look to Allah's grace if beyond cure. Third party involvement is strictly disallowed and the ban has been decreed in Sunni Muslim countries⁶³ like Kuwait, Qatar, Saudi Arabia and the United Arab Emirates since the 1980s and is still the situation as of today⁶⁴ except for some Shia communities that gives permissibility to the use of third party gamete donation⁶⁵.

Conclusion

This paper addressed the Islamic law position of In vitro fertilisation. The work was able to discuss infertility, its effects and its historical foundation under the Islamic law. It was able to state the undisputable fact that Islam allows and encourages the search for cure for any disease (infertility inclusive) whilst given recognition to the undeniable fact that humans are allowed to try to find this cure within the tenets of Shari'ah, as anything outside of this would be a transgression against the Law-giver. This led to the discussion on the different perspectives of Islamic scholars, religious and scientific-religious organisations on In vitro fertilisation through the lens of Shari'a laws.

IVF as a form of Reproductive Technology is a tested and proven cure for infertility which is of advantage to the Muslim Ummah. It is to be noted that opposition to some methods of use of the procedure does not mean that Islam is against medical advancement rather it aims at ensuring the protection of the society as a whole and the individual by ensuring compliance

⁶² Ibid, Hossam E. F, 'The Islamic viewpoint on New Assisted Reproductive Technologies', (2002) Vol. 30, Issue 1 Fordham Urban Law Journal, Article 8. < <http://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=1851&context=ulj> > accessed on 5 December, 2018

⁶³ The Sunni Muslims represent approximately 90% of the world's 1.6 billion Muslims. See: Mohammed A. A. and Chamsi-Pasha H, 'Assisted Reproductive Technology: Islamic Perspective', pp. 173-186 <https://link.springer.com/chapter/10.1007/978-3-319-18428-9_11/fulltext.html> accessed on 14th June, 2019

⁶⁴ Inhorn M.C, Patrizio P, and Serour G, 'Third party reproductive assistance around the Mediterranean: comparing Sunni Egypt, Catholic Italy and multi sectarian Lebanon', (2010) 21(7) Reproduction Biomedicine Online, pp. 848-853.

⁶⁵ Serour G. I, 'Ethical issues in human reproduction: Islamic perspectives', (2013) 29(11) Gynecol Endocrinol pp. 949-952 < <https://www.ncbi.nlm.nih.gov/pubmed/24004295> > accessed on 14th June, 2019; Aramesh K. 'Iran's experience with surrogate motherhood: an Islamic view and ethical concerns', (2009) 35(5) Journal of Medical Ethics, pp. 320-322.

with the Islamic laws and principles so as to prevent future jeopardy. Resolutions were therefore made to regulate its use and its processes to protect the objectives of Shari'a especially the family, lineage and morals of the society. These resolutions from different scholars and institutions have been successfully discussed and reproduced though with a difference on the issue of a second wife carrying pregnancy for a co-wife.

However, we align ourselves with the opinion that the practice of such form of surrogacy be prohibited like the other forms of surrogacy alike. The rationale that the wives are both married to the same husband is not enough reason for its permissibility as this could be a loophole that can be exploited which may lead to temporary marriages or contract marriages for childbirth. Thus, lying waste the protection of the family unit and the marital union that was intended to be protected in the first place. Another undeniable fact is that the contract of marriage between the first and the second wife with the husband were carried out separately, therefore, giving rise to distinct and separate rights, obligations and duties in the marriage.

In conclusion, the Islamic law position on seeking of cure for ailments is consistent with the use of IVF and seen to have served as a basis for the admissibility and acceptance of the treatment.

Recommendations

The technology of In vitro fertilisation though with many benefits to humanity has its attendant flaws and effects. The process is one which changes in dimension from time to time than how it started in 1978; thus, it is an inevitable possibility that many improvements are still going to be done. Recommendations will be made on this procedure as it is, as well as on possible eventualities. In this regard, the following are recommended:

1. Notwithstanding the rules of Islamic Law on IVF, enforceability of these rules in most Islamic countries especially countries where Muslims inhabit, is not strictly adhered to. There is *no regulatory body to enforce the resolutions on IVF* and its strict compliance. Based on this, it is recommended that awareness be made on the position of Islamic Law on In vitro fertilisation to ensure compliance in its use by Muslims. This can be done via the Islamic Medical Association, other Muslim Associations and through the Mosques. Regulatory body should be established to enforce resolutions on IVF and its efficient compliance.
2. The rationale behind the permissibility of the IVF procedure in Islamic Law is the finding of cure for infertility. However, this purpose will be defeated where accessibility to the procedure is limited as a result of the expensive cost. Infertility is a common factor to both the haves and have-nots, but the high cost of the procedure has limited the use of this innovative technology to those who have the monetary means albeit unofficially. On this, it is recommended that the costs for the procedure be reduced to improve access. Where this is not possible due to the intricacies and the series of stages, equipment and personnel involved; IVF Hospitals should set up a social contribution support system by collaborating with NGOs and individual philanthropists whereby patients can get financial help in their fertility treatment. In

addition, Government can also put this in their mandate by funding patients who fall in the category of help. This will go a long way in reducing family problems in the society.

3. On the resolution of Islamic Law perspective on IVF, it is recommended that a Uniformity approach be established as against the differences in the resolutions as seen in the resolutions made by the Islamic Fiqh Council and that of the Islamic Fiqh Academy. Thus, a collective interpretation of Islamic rules on IVF should be made by Islamic scholars (*Ijtihad jama'i*) and Muslim experts on this procedure.
4. It is also recommended that the resolutions on the position of Islamic Law on IVF be reviewed. This is necessary due to the different developments that have been made on the procedure and the legal issues that need to be considered in line with Islamic law on this matter. Cognizance must be taken of future projections and ethical and social implications on the society so that a cure will not turn around to be a curse in the long run without careful constraints. Codification of Law regulating IVF procedures in Islamic Law is hereby recommended.
5. On third party donation, where the man is the infertile or sterile one, it is recommended that he resort to fate and adopt rather than the use of another man's gamete. In the case of an infertile woman, adoption is also recommended for her while her husband is permitted to resort to marry another wife instead of resorting to an egg donation.
6. More sensitisation and enlightenment of Muslims should be done on Islamic rules regulating fertility and assisted reproduction as this will guide parents on decisions to be made upon presentation of their choices.
7. Infertility should not be the end of the world or as a ground of discrimination in the society. Muslims are encouraged to seek recourse within the Limits of Islamic Law in their search for cure and use of IVF notwithstanding the absence of a regulatory body to enforce same. Adoption should be an alternative where the procedure fails; this will serve as a means of seeking Allah's favour and mercy and a solution to their problems pending the time Allah answers their prayers⁶⁶. Though, adoption in Islamic Law is different from what is obtained in the conventional laws.
8. Finally, it is recommended that an Islamic Code on Medical Law be made on In vitro fertilisation for ease of accessibility and a mode of regulation of its procedures in line with Islamic principles.

⁶⁶ In a situation where a child is not eventually given, the Muslim should keep being steadfast in faith and his belief in qadar.