

Artificial Insemination

A hot debate is going on in the West regarding the answer to this question: If a barren husband agrees with his wife that she be artificially inseminated with a stranger's sperm, is this legally permissible?

This question was raised before the House of Commons in England and a committee of the House was set up to deliberate on the issue. In Italy the Pope declared it illegal. In France, the doctors observed: It is permissible if done by the couple's consent. In Austria, the government recognizes the child as a legitimate issue of the couple unless the husband makes a formal objection.

As to Islamic legists, I doubt whether they have dealt with this question, since it is a problem of recent origin. The Imamiyyah scholars have narrated a tradition under the head of *hudud*. Al-Hasan ibn 'Ali ('a) was asked regarding a woman who after intercourse with her husband engages in Lesbian intercourse with a virgin transferring his sperm to her, consequently making the latter pregnant. The Imam ('a) replied: The *mahr* of the virgin shall be exacted from the married woman because the child would not be delivered without the virgin losing her virginity. Then, the other woman shall be stoned to death because of her marital status. Regarding the pregnant woman, they shall wait until she delivers and the child shall be given to the father, i.e. the person of whose sperm it was born. After this, she shall be flogged.¹

Four rules can be deduced from this tradition:

(1) Stoning of the married woman, (2) Liability of the married woman to pay the *mahr* of the other woman as a compensation for her lost virginity. (3) Flogging of the other woman, (4) Attribution of the child to the person of whose sperm the child was born.

The Imamiyyah legists differ regarding application of this tradition. Of those who have applied this tradition in totality are al-Shaykh al-Tusi and his followers. Others, who accept the last three rules without accepting the first one, include the author of *al-Sharai*, who holds the punishment of the married woman to be flogging instead of stoning.² Ibn Idris has rejected the tradition totally, objecting to the statement about the stoning of the married woman, because the sentence for Lesbian intercourse is flogging, not stoning. He also objects to the attribution of the child to the person of whose sperm it was

born, because it was not born as a result of intercourse through valid marriage or by mistake. He even objects to the rule which compels the married woman to pay the *mahr* of the pregnant woman, because, according to him, the woman made pregnant was not coerced, and Lesbian intercourse with consent is similar to fornication, which does not result in liability to pay *mahr*.

This is what I have found in the legal books closely or distantly relating to the question at hand. In any case, we have two questions at hand: (1) Is artificial insemination permissible or not in the Islamic Shariah? (2) If, as a result of artificial insemination, a child is born, what shall be its legal status and to whom shall it be attributed?

Artificial Insemination is Prohibited

Regarding the first question, there is no doubt that such insemination is prohibited due to following reasons: (1) Our knowledge of the Shariah, and its warning and emphasis concerning sexual matters, tell us that permissibility of anything in this regard rests upon permission of the Shar'ah. Therefore, the mere possibility of its being impermissible is sufficient for making restraint and caution obligatory. (2) In the thirty-first verse of Surat al-Nur:

وَقُلْ لِلْمُؤْمِنَاتِ يَغْضُضْنَ مِنْ أَبْصَارِهِنَّ وَيَحْفَظْنَ فُرُوجَهُنَّ

And say to the believing women that they cast down their looks and guard their private parts...
(24:31)

God has commanded women that they 'safeguard' their organs of reproduction; but He has not mentioned from what they are supposed to be safeguarded. Neither has He specified that they safeguard them from intercourse or some other thing. The jurisprudents as well as linguists of the Arabic language concur that any proposition devoid of any particular specification implies the generality of inclusion. Similarly the inclusion of a specification in a proposition limits the proposition to that extent. For example, if it is said, "Safeguard your wealth from thieves", it denotes that wealth must be protected only from being robbed. But if it is said, "Safeguard your wealth," without specifying any specific thing, it implies that wealth is to be protected from being robbed, from damage, from waste, etc. Accordingly, the verse of the Qur'an connotes that the organs of reproduction be safeguarded from everything including insemination. This verse is reinforced by verses 5-7 of the Surat al-Mu'minun:

وَالَّذِينَ هُمْ لِفُرُوجِهِنَّ حَافِظُونَ

إِلَّا عَلَى أَزْوَاجِهِنَّ أَوْ مَا مَلَكْتُ أَيْمَانُهُمْ فَإِنَّهُمْ غَيْرُ مُلْوَمِينَ

فَمَنِ ابْتَغَى وَرَاءَ ذَلِكَ فَإِنَّ لِكَ هُمُ الْعَادُونَ

And who guard their private parts. Save from their wives or those whom their right hands own, for then they surely are not blameworthy. But whoever seeks to go beyond that, those are the transgressors. (23:5-7)

The phrase

لِكَ فَإِنَّ لِكَ هُمُ الْعَادُونَ

indicates that any act contrary to the guarding of the parts amounts to transgression of the lawful limits, except that which occurs through marriage or ownership.

Though the verses speak specifically of men, it does not hinder their application to women, because there is consensus that there is no difference between men and women in rules of this kind.

Some may say that the phrase

يَحْفَظُنَ فُرُوجَهُنَّ

does not prove that this kind of insemination is *haram*. It only indicates the impermissibility of (extra-marital) sexual relations, and this is the meaning that comes to mind and is understood from the verse. In other word, this verse may imply a wider meaning which includes artificial insemination or something else; but that which is apparent from its word is fornication, and it is a known fact that it is the generally understood meanings of dicta that are accepted for deriving the rules of the *Shari'ah*, not their literal meaning.

The answer is that this apparent meaning of the verse is not inherent in it; rather, this meaning has come to be associated with the verse because of its frequent usage in that context (i.e. to mean fornication). This is similar to the use of the word 'water' in Baghdad to mean the water of the Tigris and in Cairo to mean the water of the Nile, but this apparent meaning is of no consequence at all, for it fades on a little amount of reflection. No one can claim that the word 'water' in Baghdad was coined to mean only the water of the Tigris and in Cairo to mean only that of the Nile. Moreover, if artificial insemination were considered permissible on this ground, so would be the licking of dogs..., because both these notions are far removed from the meaning which immediately comes to the mind.

The Offspring by Artificial Insemination

Now a child is born as a result of artificial insemination: shall it be a legitimate child, and to whom shall it

be attributed?

The answer is: As regards the sterile husband, the child cannot be attributed to him under any circumstances, and adoption is not valid in Islam:

وَمَا جَعَلَ أُدْبِيَاءَكُمْ أَبْنَاءَكُمْ

And He has not made those whom you call your sons, your sons. (33:4)

As to the woman who bears it, some legal schools attribute the child to her, because an illegitimate child inherits from its mother and from its relatives through her and they inherit from it.³ Therefore, if an illegitimate child can be attributed to its mother, a child born by artificial insemination is better entitled to be similarly attributed.

The Imamiyyah, who do not attribute an illegitimate child to the fornicator or the fornicatress, observe: The child born by artificial insemination does not inherit from its father or mother, and neither do they inherit from it. Ayatullah al-Sayyid Muhsin al-Hakim al-Tabatab'i has differentiated between an illegitimate child and a child born by insemination. He observes: A child born by insemination shall be attributed to its mother, because there is no valid reason to negate its status, and the grounds which prohibit an illegitimate child from attribution to its mother do not apply here.

But as regards the man whose sperm is inseminated, al-Sayyid al-Hakim says: The child shall not be attributed to him, because in order for a child to be attributed to a person it requires that he should have had intercourse irrespective of whether he performs it, or is unable to perform it but has his sperm reach her reproductive organ during his effort, or is transferred to another woman as a result of Lesbian intercourse as mentioned in the tradition from al-'Imam al-Hasan ('a). Apart from these cases, a child shall not be attributed to the person of whose sperm it was conceived, even if he is the husband."

Whatever the case, artificial insemination is *haram* and no Muslim may pronounce it *halal*. But the impermissibility of artificial insemination does not necessarily imply that the child born of it is an illegitimate issue, for at times intercourse may be prohibited but the child born of it is considered legitimate—as in the case of the person who has intercourse with his wife during her menses or during the fast of Ramadan, in both of which cases it is a prohibited act; but nevertheless the lineal bond between the child and the parents shall be established.

Accordingly, if a person has artificial insemination performed despite its impermissibility, the child born shall not be attributable to the husband because it was not born of his sperm, nor shall it be attributable to the man whose sperm was inseminated, because he has not had sexual intercourse, neither by marriage nor by mistake. But the child shall be attributed to its mother because it is her actual offspring and her legal child, and every actual offspring is a legally recognized issue unless the opposite is proved.

1. As mentioned in al-Jawahir, most Shi'i legists observe that the sentence for Lesbian intercourse is 100 lashes for a married as well as an unmarried woman, irrespective of the passive or active roles of the participants. In Ibn Qudamah's al-Mughni, 3rd. ed. vol.8, p.189, it has been observed: There is no hadd for Lesbian intercourse because there is no penetration involved, and it is for the judge to award a suitable punishment (tazir) to the two culprits.
2. Al-Mirath fi al-Shari'at al-'Islamiyyah of al-'Ustadh 'Ali Hasb Allah, 2nd. ed. p.94; Ibn 'Abidin, and Ibn Qudamah in al-Mughni, chapter on inheritance. fasi al-'asabat (male relatives).
3. The letter of al-Sayyid al-Hakim, dated 7th Ramadan 1377, in reply to a question regarding this issue.

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