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# Chapter Five: New Techniques in Human Reproduction

The birth of the first 'test-tube-baby' in 1978 made headlines all over the world. All the world, with the exception of the Vatican, welcomed this new development in human science. After all, man is the prime creation of God. Allah has created the universe for man but created the man for Himself. During the last five decades, man has taken great leaps in science and technology. One of the areas which has amazed us most is the new techniques in human reproduction.

It is interesting to note that even on this issue, Islam stands in the middle of the two extreme views: On the one hand, the Roman Catholic Church has categorically condemned in vitro fertilization, artificial insemination and surrogate motherhood. On the other hand, the libertarians allow these methods no matter whether it is done between married couples or others.

Islam, as we shall see below, allows the new reproduction technology as long as it is done between the married couples. In this chapter, we will examine the new techniques designed to help couples in reproduction, and see whether Islam agrees with them or not.

## A. Human Reproduction Techniques

## 1. Artificial Insemination by Husband (AIH)

AIH is used when the husband can produce semen, but his semen is not quite adequate to achieve fertilization. The inadequacy of semen can be attributed to low number of active sperms or the inability of sperms to swim fast enough towards the ovum. AIH can also be used when the husband is suffering from premature ejaculation.

In AIH, the sperm is obtained from the husband by his masturbation and is then concentrated and 'improved' in the laboratory. This semen is then introduced into the wife's cervix at the best fertile days. The semen is introduced by an injection. Depending on the regulations of each institute, the injection can

be carried out by a doctor or a nurse, or by the couple themselves

As far as the *shari'ah* is concerned, there is no problem in the Artificial Insemination by Husband (AIH) as it is done between a lawfully wedded couple.

Masturbation is forbidden, then how can the husband's semen be obtained for AIH? It is true that masturbation is forbidden in Shi'ah *fiqh*, but we have also said that masturbation by one's spouse is permissible. Therefore, in case of AIH, the wife can masturbate the husband in order to obtain the semen.

It will be interesting to know how the Roman Catholics intend to solve this problem: "The Roman Catholic Church does permit artificial insemination if the husband's semen is used and is the product of intercourse with his wife, not masturbation, but this usually involves intercourse in a doctor's office and is 'hardly romantic,' Father Wolak said."1

#### 2. Artificial Insemination by Donor (AID)

AID is very similar to AIH. However, AID is used in cases where the husband's semen is definitely inadequate in quantity or quality. In the Western society, some single women who wish to remain unmarried but have a child also use this method to become pregnant. In England, two to four thousand births in a year are attributed to AID.

As far as Islam is concerned, Artificial Insemination by Donor is absolutely forbidden because it is by a donor and not by the woman's husband.

Since it does not involve any sexual relations between the donor and the woman, and therefore, cannot be categorized as fornication or adultery some people may ask: how can it be haram? The Qur'an clearly says,

#### "Say to the believing women that they...should guard their private parts." (24:30)

The divine command to guard the private parts is unqualified; it does not say that guard only from illicit sexual intercourse; it says that guard from everything except from your spouse. Allah describes the believers as

"Those who protect their private parts except from their spouses.... Therefore, whosoever seeks more beyond that, then they are the transgressors." (23:5)

Therefore, even injecting the sperm of another man would constitute a transgression and a violation of the command of Allah.2

What is the status of a child conceived by AID? If, God forbid, a woman conceives a child through AID, then the child will not be considered an illegitimate child because he was not conceived through illicit

sexual relations. Child-mother relationship is clear in such cases; as for the child-father relationship, most of our present *'ulama* clearly state that he will be considered the child of the donor the child will inherit him, be a *mahram* to his wife and children.3

This decision of the mujtahids is based on a *hadith* which provides an example very similar to the case of a child conceived by AID. This *hadith* has been narrated by various sources from Imam Hasan, Imam Muhammad al-Baqir and Imam Ja'far as-Sadiq (peace be upon them all).

A question was put to the Imams that if a woman had intercourse with her husband, and then immediately she goes to her slave–girl and has lesbian relations with her in which semen of the husband flows from the woman into the vagina of the slave–girl and makes her pregnant.

What happens in this case? The Imams, after explaining the punishment which has to be imposed upon the two women, say that the child born from the slave-girl will be related to, and given in the custody of, the owner of the semen.4

This is a very good example of how our 'ulama' solve the modern day problem even though they use the same old sources of Islam!

#### 3. In Vitro Fertilization (IVF)

The first two methods were for cases where the husband's sperm lacked in quality or quantity. IVF is a technique used mostly for women whose fallopian tubes are blocked and cannot be remedied by surgical procedures. Also for those who fail to conceive despite having normal fallopian tubes and when all possible causes of infertility have been excluded. "In vitro" means a test-tube.

In IVF, one or more ova are removed from the mother through a small syringe and placed in a test-tube. Then the sperm of the husband is used to fertilize the ovum. After fertilization, the ovum is allowed to develop in the test-tube till the eight-cell stage. Then it is implanted into the mother's womb.

IVF may also be used in cases where the husband's semen contains so few sperms that it becomes difficult for them to fertilize an ovum in the fallopian tube. By IVF, sperm of such a person is used to fertilize the ovum in a test-tube. As far as the *shari'ah* is concerned, in vitro fertilization is allowed as long as it be being done between a married couple.

### 4. Other Possibilities in Human Reproduction Discussed by Our 'Ulama'

It will be of interest to know that our mujtahids are keeping themselves ahead of scientific technology in deciding the religious and ethical issues about human reproduction. While talking about artificial insemination, they also talk of the following possibilities:

1. It is permissible to invent an artificially made ovum, fertilize it with a man's sperm and let the child develop in an artificial womb. In this case, the child will be fully related to the father. At most, he or she

will be a child without a biological mother.

- 2. It is permissible to invent an artificially made sperm and inseminate it into a woman's womb. Such a child will be fully related to the mother. At most he or she will be a child without a biological father.
- 3. It is permissible to take an artificially made ovum and an artificially made sperm, and then fertilize and develop the two in an artificial womb. Such a child will be related to no one!
- 4. If a twin boy and girl are born through the above procedures, then in the first two cases they will be normal siblings for example, they cannot marry one another but in the third case, they will not even be considered as siblings because they do not have a parent.5

#### 5. Surrogate Motherhood

Surrogate motherhood is a by-product of the artificial insemination. It has created great controversy in the legal and ethical circles around the world, especially so after the baby 'M' case of 1987.

Surrogate motherhood means that a woman allows a fertilized ovum of another couple to be injected into her womb. Then she carries the child to its full term for the other couple. This can be done free or in exchange for some money as was the case in baby M's birth. This procedure of human reproduction is adopted when a woman has a problem in carrying her child to its full term.

From the *shari'ah* point of view, surrogate motherhood as portrayed above is not allowed because it involves the insertion of a sperm of another person into the woman's uterus. This goes against the verse of the Qur'an which says that the believing women should guard their private parts except from their spouses.

\* \* \*

There are, however, certain procedures in Islamic marriage system which would allow some form of surrogate motherhood. For example, if a woman is having problems in carrying her husband's child to its full term, then the husband may marry another woman (on a temporary or permanent basis) and then an ovum of the first wife fertilized by the husband's sperm can be injected into the womb of the second wife with her approval.

To which of the two wives will the child belong? Does it belong to the genetic mother (the first wife) or the biological mother (the second wife)? According to Ayatullah al-Khumayni it depends on the age of fetus.

If it was inseminated in the womb of the second wife after four months, then it belongs to the first wife the second wife is just a receptacle. If it was inseminated before its fourth month, then it is difficult to say that the child belongs to the first wife.6

However, there is another way of looking at this relationship. I have already talked about the *'urfi* and *shari'* definitions earlier. In the present case, the common people have a perception about child-mother relationship.

The *'urfi* would say that the woman who "gives birth" is the mother. So based on this *'urfi* perception, I would say that the child belongs to the biological mother, the second wife irrespective of its age at the time of insemination. The child will be *mahram* to her other children and will also inherit from her.

As for the relationship between the child and the first wife, I would say that although she is not a biological mother, but her status as a genetic mother places her above a *riza'i* mother. (A *riza'i* mother is a woman who did not give birth to the child but breast-fed him or her.)

Based on this relationship, the child will be *mahram* to all the children of the first wife even if they be from a different father; however, he or she will not inherit from her because the right of inheritance is based on uterine relationship.

## **B. Some Ethical Questions**

What you will read below are issues being discussed for the first time from the *shari'ah* point of view. These are the results of my initial interpretation. I hope this will stimulate a fruitful discussion among our mujtahids.

#### 1. Destroying the Extra Fertilized Ova

In most cases of artificial insemination, three ova are removed from the woman's body and all three are fertilized by the husband's sperms. But only one is used for reimplantation into the woman's womb. And if it fails in the first attempt, then the other fertilized ova are used.

The question which has created much controversy is about the extra and unwanted fertilized ovum. What should be done with the extra fertilized ovum? Must it be used? Can it be destroyed?

According to the *shari'ah*, there should be no problem in destroying the extra fertilized ovum. It will not constitute abortion because, firstly, abortion only takes place after the implantation of the fertilized ovum in the womb and, secondly, abortion takes place in a woman's body not in a test–tube or a laboratory dish!

## 2. Frozen Embryos

Another by-product of the new technology is the so-called sperm bank where sperms and fertilized ovum are preserved in frozen state. There are four questions which must be addressed here.

Firstly: Is man allowed to preserve his sperms in frozen state? Similarly, are married couples allowed to

preserve their fertilized ova for future use? I can think of no *shari'ah* basis for prohibiting such an act. It is no different from the act in which a person banks or donates his blood.

Secondly: Is it permissible to sell the sperms or the fertilized ova? One cannot sell his sperms to be injected into the uterus of another woman; he may only sell it to a scientific institution for medical research. Similarly, a couple cannot sell their fertilized ova to be implanted into the womb of another woman.

Thirdly: Can a woman use the preserved fertilized ovum or sperms of her husband after the latter has died? Apparently, there is nothing to prevent her from doing so. The frozen ovum (fertilized by her husband's sperm) is her property and therefore she can use it.

The child will, of course, be legitimate! However, this would be allowed only if the woman does not marry another person after her husband's death. Since Islam does not allow a woman to have more than one husband at a time, the second husband will take the place of the first in the verse which says, protect their private parts except from their spouses."7

Fourthly: Can a woman use the fertilized ovum after she has been divorced from her husband? This is allowed only if she has not married another person. As soon as she marries another person, she cannot use the ovum fertilized with the sperm of her previous husband. The basis of this view is the same as mentioned above.

- 1. The Vancouver Sun (March 11, 1987) p. A7.
- 2. I am indebted for this answer to the late Shaykh Muhammad Jawad al-Mughniyyah in his marvelous book al-Fiqh 'ala 'l-Madhahibi'l-Khamsah, p. 374.
- 3. Al-Fiqh, p. 375-6; Minhaj, vol. 2, p. 395; Tahrir, vol. 2, p. 621-622.
- 4. Wasa'il, vol. 18, p. 426-428.
- 5. The first example has been mentioned by both Ayatullahs al-Khu'i and al-Khumayni, whereas the other three arc mentioned by the latter only. See Minhaj, vol. 2. p. 395 and Tahrir vol. 2, p 622-623.
- 6. Tahrir, vol. 2, p. 623.
- 7. See 23:5.

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