

Fatwas and ARTs: IVF and Gamete Donation in Sunni v. Shi'a Islam

*Marcia C. Inhorn, Ph.D., MPH**

I. INTRODUCTION

Since the birth in 1978 of Louise Brown, the world's first test-tube baby, assisted reproductive technologies (ARTs) have spread around the globe, reaching countries far from the technology-producing nations of Euro-America. Perhaps nowhere is this globalization process more evident than in the Muslim world, where hundreds of in vitro fertilization (IVF) centers now cater to the world's 1.3 billion Muslims. In the Middle East, the private IVF industry is flourishing, with clinics found in most major cities. In Egypt, for example, nearly sixty IVF clinics cater to a population of approximately seventy million people, while in tiny Lebanon (population four million), more than fifteen IVF centers are found, one of the highest per capita concentrations in the world. In other words, IVF and even newer ARTs are a burgeoning part of everyday life in the Muslim Middle East at the start of the new millennium. Literally thousands of infertile couples from Morocco to Iran are resorting to ARTs in order to bear cherished offspring.

However, in the Muslim world, including the Middle East, ARTs are practiced according to religious norms, which are clearly set out in non-legally-binding, but nonetheless authoritative religious proclamations called *fatwas*. In this article, I intend to describe the impact of important ART *fatwas* on the practice of IVF and related technologies. Furthermore, I intend to show how ideological rifts between dominant Sunni versus minority Shi'ite forms of Islam are leading to quite divergent practices of third-party gamete donation in the Muslim world. I will do this through careful examination and comparison of two major *fatwa* texts, one offered by the leading cleric of Al-Azhar University in the heart of the Sunni Muslim world (Cairo, Egypt) and one offered by the supreme jurisprudent of the Shi'a branch of Islam in Iran. As will be seen, these two *fatwas* diverge in both style and substance, with implications for the practice of

*Professor of Health Behavior and Health Education, Women's Studies, and Anthropology and Director, Center for Middle Eastern and North African Studies, University of Michigan, Ann Arbor.

ARTs that are potentially profound. These differences, furthermore, have major implications for marriage, gender relations, and gender equity in the Muslim world, as will be shown in the final section of this article.¹

II. THE ROLE OF *FATWAS*

Islam has often been characterized as an “encompassing” or “comprehensive” religion, in that the teachings of Islam cover many fields of human activity, be they spiritual, social, cultural, educational, economic, political, or medical. Instructions that regulate everyday activities—for example, daily prayer, pork and alcohol prohibitions, and the care of orphans and the elderly—and are meant to be adhered to by observant Muslims, constitute the Islamic *shari‘a*.² Muslims consider the primary sources of the *shari‘a* to be the Qur’an, considered the word of God as delivered to the prophet Muhammad; the *sunna* and *hadith*, a collection of traditions and sayings of the prophet Muhammad as authenticated by Islamic jurists; *ijma‘*, which is the unanimous opinion of Islamic scholars; and *qias*, or analogy, which involves intelligent reasoning on issues not mentioned in the Qur’an or *hadith* (usually by examining similar or equivalent issues already ruled upon).³

When an action is mentioned in the Qur’an or *hadith*, the correct action to be taken by a devout Muslim is considered to be straightforward. Thus, for example, there is little disagreement among Muslims regarding the prohibition against consuming pork or alcohol.⁴ However, when there is no direct mention of a phenomenon such as the use of ARTs in these holy scriptures, contemporary Islamic scholars must arrive at a religious judgment through interpretation, analogy, and personal reasoning, a process known as *ijtihad*.⁵ Such judgments are regularly made by leading religious authorities, who issue *fatwas*, or nonbinding religious opinions, interpreting

1. This article is based on medical anthropological research carried out in Egypt, Lebanon, and Arab America in 1996 and 2003–2005 [hereinafter Fieldwork]. See MARCIA C. INHORN, *LOCAL BABIES, GLOBAL SCIENCE: GENDER, RELIGION AND IN VITRO FERTILIZATION IN EGYPT* (2003).

2. JOHN BURTON, *THE SOURCES OF ISLAMIC LAW* (Edinburgh University Press 1990). See also ISLAMIC LAW AND THE CHALLENGE OF MODERNITY (Yvonne Yzabeck Haddad & Barbara Greyer Stowasser eds., 2004).

3. Gamal Serour et al., *Bioethics in Medically Assisted Conception in the Muslim World*, 14 J. ASSISTED REPROD. & GENETICS 12 (1995).

4. Gamal I. Serour, *Islam and the Four Principles*, in PRINCIPLES OF HEALTH CARE ETHICS 78 (Raanan Gillon ed., 1994).

5. Sandra D. Lane & Robert A. Rubinstein, *The Use of Fatwas in the Production of Reproductive Health Policy in Egypt*, Paper presented at the 90th Annual Meeting of the American Anthropological Association, Chicago, Illinois (1991).

whether a behavior or action falls into one of these five categories, according to the Islamic *shari'a*: obligatory (*wajib*), recommended (*sunna*), permitted (*mubah*), undesirable but not forbidden (*makruh*), or forbidden (*haram*).⁶

Any religious scholar may offer a *fatwa* for the guidance of his followers, and many do.⁷ However, most Muslim countries mandate certain “official” sources of *fatwas* for the country. In Egypt, for example, the government has mandated that there be only three official sources for *fatwas*: those issued by the country’s highest-ranking religious figure, the Grand Mufti of Egypt; those issued by the Grand Shaikh of Al-Azhar University; and those issued by the Fatwa Committee of Al-Azhar University.⁸ Because Al-Azhar, one of the oldest universities in the world, is considered by most Muslims to be the center for Islamic education in the Sunni Muslim world, the *fatwas* issued from Al-Azhar have great weight throughout the Arab countries, as well as the non-Arab Sunni Muslim world (e.g., South and Southeast Asia).⁹

Given the rapid development of reproductive technologies that were never mentioned in the Islamic scriptures, it is not surprising that many *fatwas* have been issued, both officially and unofficially, in recent years to cover a wide range of reproductive technologies, including those that involve birth control, abortion, sterilization, female circumcision, and surrogacy.¹⁰ Not surprisingly, ARTs have been one such area of *fatwa* activity, with the initial ART *fatwa* emerging from the Sunni Muslim world, as described in the following section.

III. SUNNI ISLAM AND IVF

It is useful to begin with Sunni Islam, which is the dominant form of Islam found throughout the Muslim world.¹¹ Nearly ninety percent of the world’s 1.3 billion Muslims are Sunni Muslims, with the strictest form of Sunni Islam emanating from Saudi Arabia.¹² In Egypt, for example, more

6. *Id.*

7. The term “his” followers is used because Muslim religious authorities who issue *fatwas* are always male.

8. See Lane & Rubinstein, *supra* note 5.

9. Mohamed A. Aboulghar et al., *Some Ethical and Legal Aspects of Medically Assisted Reproduction in Egypt*, 6 ETHICS & MED.: INT’L J. BIOETHICS 1 (1990).

10. See Lane & Rubinstein, *supra* note 5.

11. See INHORN, *supra* note 1.

12. See ELEANOR ABDELLA DOUMATO, GETTING GOD’S EAR: WOMEN, ISLAM, AND

than ninety percent of citizens are fairly conservative Sunni Muslims.¹³

Infertile Sunni Muslim couples are usually extremely concerned about making their IVF babies in the Islamically-correct fashion. To that end, they seek out the “official” Islamic opinion on the practice of IVF in the form of a *fatwa*, which is perhaps best viewed as a non-binding yet authoritative religious proclamation issued by an esteemed religious scholar.¹⁴

The first *fatwa* on medically assisted reproduction was delivered on March 23, 1980, by His Excellency Gad El Hak Ali Gad El Hak, the Grand Sheikh of Egypt’s Al-Azhar University, the major center of religious education in the Muslim Middle East.¹⁵ This initial *fatwa*—parts of which are posted in some Egyptian IVF clinics—has proven to be authoritative and enduring, even though it was issued at least six years before IVF and the other assisted reproductive technologies became available in Egypt and eventually other parts of the Muslim Middle East.¹⁶ Since that time, other highly regarded religious authorities—both at Al-Azhar (following His Excellency El Hak’s death), the Dar Il-Iftah (i.e., the *fatwa*-issuing religious center) in Saudi Arabia, and throughout the Muslim Middle East—have essentially agreed with all the main points of this initial religious opinion on the subject of medically assisted reproduction among Sunni Muslims.¹⁷ In fact, the basic tenets of the original Al-Azhar *fatwa* on IVF have been upheld by other *fatwas* issued since 1980 in Egypt, Saudi Arabia, and other Muslim countries, and have achieved wide acceptance throughout the Sunni Muslim world.¹⁸

A. The Al-Azhar Fatwa

Because the initial Al-Azhar *fatwa* has been so profoundly important and authoritative for the majority of the world’s Muslims, it is reproduced here, in a close translation (from classical Arabic into English) intended to convey the original language of its writing, as well as the style of religious-legal reasoning and analogy used to make prescriptive and proscriptive

HEALING IN SAUDI ARABIA AND THE GULF (2000).

13. See INHORN, *supra* note 1.

14. *Id.*

15. Gamal I. Serour et al., *In Vitro Fertilization and Embryo Transfer in Egypt*, INT’L J. OF GYNECOLOGY AND OBSTETRICS 36 (1991).

16. INHORN, *supra* note 1.

17. See *id.*

18. D. Meirow & J. Schenker, *Reproductive Health Care Around the World: The Current Status of Sperm Donation in Assisted Reproduction Technology: Ethical and Legal Considerations*, J. ASSISTED REPROD. & GENETICS 14, 133 (1997).

statements regarding IVF and related technologies.¹⁹ Furthermore, as will be clear throughout the *fatwa*, many references to Qur'anic passages and other scriptural sources are cited. It is important to note here that this *fatwa* was obtained by the author once it had already been translated from Arabic into English under the auspices of the Ford Foundation in Cairo, Egypt. Attempts were made by the Ford Foundation translator to preserve the original Arabic and to translate the *fatwa* verbatim. Such verbatim translation led to some grammatical and stylistic infelicities in English. In order to make the *fatwa* more readable for an English-speaking audience, the author has made minor copyediting changes, which nonetheless preserve as closely as possible the meaning of the text. The "original" translation can be found in Appendix I. This "copyedited" version of the Al-Azhar *fatwa* is as follows:

1. Introduction

Lineage and relationship[s] of marriage are graces of Allah to mankind, highly appreciated, and they are [the] basis of judgment. 'It is He who has created man from water, then He has established relationships of lineage and marriage, for thy Lord has power over all things.' (Furqan, or the Criterion 59) Therefore, origin preservation is a most essential objective of Islamic law.

In this concern, Scholar Elghazali stated: 'Allah's goal is to prevent harm and cause welfare; however, human beings are to gain their benefit upon accomplishment of objectives. The benefit is to observe targets of Islamic law, which are five: to preserve beings' religion, themselves, [their] minds, descendants and money. Hence, any act implying preservation of these five fundamentals is a benefit, and, on the contrary, any act which jeopardizes them is then a harm.'

Therefore, Allah permitted marriage and prohibited fornication to preserve the origins. 'And among His signs is this, that He created for you mates from among yourselves, that ye may dwell in tranquility with them, and he has put love and mercy between your (hearts); verily, in that are signs for those who reflect.' (Rum, or The Roman Empire 21)

'Nor come nigh to adultery: For it is a shameful (deed), and an evil, opening the road (to other evils).' (Esraa, of Children of Israel 32)

A legitimate child will grow and be raised by his parents in the best manner they can afford, while an illegitimate one is a shame for the

19. Shaikh Gad El Hak Ali Gad El Hak, Medically Assisted Reproduction, *fatwa* issued from Al Azhar University (1981). The complete text of this *fatwa* was first published by Al Azhar University, Cairo, Egypt, in 1981. It was translated into English under the auspices of the Ford Foundation in Cairo, and was obtained by me during medical anthropological research conducted there in 1996.

mother and her people, neglected in the community and will then turn into a disease.

Islamic scholars discussed illegitimate children in books of Islamic law, [and] explained that they are human beings who deserve to be brought up properly and taken care of so as to stimulate what is best in them and avoid their evilness. 'And if any one saved a life, it would be as if he saved the life of the whole people.' (Maida, or The Table 31)

As for proper origin[s], Islam is highly concerned and hence it was coded in a way to call for marriage and guarantee stability of the family. Generally, Islam organized people's life in an appropriate pattern with justice and equity.

There are [a] few rules set by Islam to ensure appropriateness of origin which will be represented in the following:

Adultery is forbidden.

A compulsory period during which a divorcee should not remarry (*iddat*) (to ensure she is not already pregnant, which confuses father's identification).

Adoption is forbidden (by Qur'anic definition) for purposes of origin protection and family rights' preservation. 'Nor has He made your adopted sons your sons. Such is (only) your mouths. But God Tells (you) the truth, and He shows the (right) way. Call them by (the names of) their fathers: that is more just in the sight of God. But if ye know not their fathers' (names, call them) your brothers in faith, or your *maulas*.' (Ahsab, or The Confederates 4,5)

In this, Islam is not to approve [of one] who has no origin, or force him on others.

Islam, [which] organized relations of a man and woman, emphasized that it should be in [the] form of proper marriage, so as to protect origins and respect a sperm from which a child is created. 'Now let man but think from what he is created! He is created from a drop emitted from between the backbone and the ribs.' (Tariq, or The Night Visitant 5,6,7) 'Verily, we created man from a drop of mingled sperm.' (Dahr, or Time. Insan, or Man 2)

However, a sperm is not to acquire shape until it is introduced into a woman's womb ready to receive it, and that could be through a sexual body contact (intercourse). The child then will be called after his father, [if] the aspect of marriage is present. However, there are cases where a man's sperm could be introduced to a woman's womb through means other than body contact.

Islamic scholars elaborated in their books on this issue, and mentioned several examples where a woman was able to get and introduce a husband's or a master's sperm into her womb, which

consequently will require a waiting period (*iddat*) before she remarries and creates a lineage.

In light of the above mentioned, we will discuss several issues in the following:

Marriage's noble objective is reproduction, so as to preserve mankind; moreover, body contact among husband and wife is based on natural desire.

Thus, body contact (intercourse) is the basic and only means allowing a sperm to reach the proper location as per Allah's will. If pregnancy could not occur through normal body contact (intercourse) due to some illness, it is then permissible to impregnate a woman by her husband's sperm through medical assistance (provided they are undoubtedly her husband's and not [that of] any other man or animal). A waiting period is then necessary and lineage is proved based on the previously mentioned examples.

If the husband is impotent, it is unlawful to have a stranger donate sperm. This consequently will confuse origins; furthermore, the method implies adultery which is strictly unlawful by [both the] Qur'an and Sunna (what has been taken from Prophet Muhammed, peace be upon him). If a woman's ovum to be impregnated by a man's sperm (not the husband), then the sperm donor's wife acts as surrogate, it is then considered adultery (confuses origins) as well as unlawful.

However, even though it is the husband's sperm which is not to acquire shape unless by Allah's permission upon unity with the wife's ovum, and since this aspect is not present in the case discussed, the wife then is not the husband's tilth as she should be as Allah says: 'Your wives as a tilth unto you' (Baqara, or The Heifer 222) A woman shall not be pregnant unless through a normal legal intercourse with her husband or by introducing his sperm into her womb to acquire shape as Allah says: 'He makes you, in the wombs of your mothers, in stages one after another, in three veils of darkness.' (Zumaror, or The Crowds)

Hence, in the case discussed, the ovum is not the wife's, which implies unlawful adultery.

2. In Vitro Fertilization

[If] a wife's ovum is impregnated by her husband's sperm outside the womb in a tube, then implanted back to the womb with no doubts or confusion about sperm donor (human or animal) due to medical requirements [such] as illness of the husband or wife which might affect their relation.

However, if a trustworthy physician recommends in vitro fertilization and shall be responsible for its appropriateness, then it is

permissible and obligatory as a treatment for a woman who has pregnancy impediments. Furthermore, Prophet Muhammed, peace be upon him, mentioned the necessity to seek remedy for any disease, and sterility is a disease that might be curable; therefore to seek lawful treatment is then permissible.

If the case was full surrogacy, in which an animal's womb will be used temporarily to bear and allow an impregnated ovum [to] go partially through stages of growth which are mentioned in the Qur'an: 'Then we placed him as (a drop of) sperm in a place of rest, firmly fixed, then we made the sperm into a clot of congealed blood, then of that clot we made a lump [fetus], then we made out of that lump bones and clothed the bones with flesh, then we developed out of it another creature. So blessed be God, the best to create!' (Muminun, or The Believers 13,14) It will definitely acquire characteristics of the bearing animal according to genetics factors which were previously proven by the Quran. 'Should he not know he that created?' (Mulk, or The Dominion 14) Our Prophet, peace be upon him, instructed us to choose the best woman as a wife for the sake of our children and to avoid beautiful women who grew up in a corrupted environment for genetic purposes as well as [for] ensuring a healthy atmosphere to bring up children.

The above mentioned clarifies even more how an animal's surrogacy is to affect the born creature, who will not be of a human nature. Therefore, a person who uses this method is to ruin Allah's creation. Allah says: 'So fear God as much as ye can.' (Tagabun, or The Mutual Loss and Gain 16)

According to Islamic law, one of the fundamentals is to prioritize harm prevention, then well being provision.

We conclude that this method of medically assisted reproduction [animal surrogacy] is an absolute cause of evil, therefore unlawful. As for the father who accepts one of the previously mentioned unlawful means of medically assisted reproduction, he is to be considered one who lost his dignity. Any child who is begotten through one of the stated cases is illegitimate, [if] it is certain that the sperm donor is not the father (adultery). Accordingly, the child is a foundling and is to be called after his mother.

Concerning the position of a physician who undertakes one of the unlawful cases, Islam allowed lawful treatment and the physician being the means to do so according to his experience. He is then responsible in case of negligence or seeking an unlawful (by Islam) method. Therefore, a physician responsible for medically assisted reproduction should study the method thoroughly [so] that it should not be unlawful, or else he will be sinning, for whatever led to an

unlawful act is consequently unlawful. [Both the] Qur'an and Sunna indicated a very important principle, which is to cause harm prevention. 'Revile not ye those whom they call upon besides God, lest they out of spite revile God in their ignorance.' (Anam, or The Cattle 108) The principles are very clear as per the aforementioned verse; it calls not to curse polytheist Gods in order not to allow them to take it as a cause and curse Allah. Prophet Muhammed, peace be upon him, said: 'May Allah damn alcohol, [a] person who drinks it, who offers it, who sells it, who buys it, who squeezes it, who carries it, and whom it is carried for.' That proves one should not even assist in an unlawful act. Another example is that Islam forbids a man to study a woman's beauty or be alone with a woman, since that could be an atmosphere that causes adultery.

We herein conclude that based on the above mentioned verses of the Qur'an, definitions of the Sunna and examples, a physician who conducts a medically assisted reproduction in an unlawful form is at fault and his earning is bad.

A physician should only offer lawful treatment to a husband and wife wishing to have a legitimate child and establish a family. Furthermore, it is emphasized that medically assisted reproduction is only lawful among a husband and a wife, but to use such experiments so as to improve [the] race is absolutely unlawful. Instead of establishing a sperm bank taken from [the] best selection of men, then use it to impregnate also well-selected women, Islam instructed [us] to choose the best of either husband or wife in all aspects (health, ethics, mind, and so forth). It set lawful criteria to keep a strong and healthy human generation.

Finally, a human being is not to be taken as a means of experiment[ation], for Allah put him in a respecting position. 'O ye who believe, give your response to God and his Apostle, when he calleth you to that which will give you life, and know that God cometh in between a man and his heart, and that it is he to whom ye shall (all) be gathered and fear tumult or oppression, which affecteth not in particular (only) those of you who do wrong: And know that God is strict in punishment.' (Anfal, or The Spoils of War 24, 25)²⁰

B. Key Points of the Al-Azhar Fatwa

Although this *fatwa* is written in what may be described as "high"

²⁰ See Appendix I for the unedited English version of the *fatwa* that I received from the Ford Foundation.

religious qua legal language, it has been carefully interpreted by the Muslim medical community and, in Egypt, has been upheld by the Islamic and Coptic Christian leadership, the Egyptian Society of Obstetrics and Gynecology, and the Egyptian government itself.²¹ For all intents and purposes, this *fatwa* has become the “law of the land” in IVF clinics in Egypt and other parts of the Sunni Muslim world, where clinics carefully follow the guidelines spelled out in the *fatwa*.²² So, what are the main points of this authoritative Sunni *fatwa*? In other words, what bearing does this *fatwa* have on the actual practice of ARTs in IVF clinics in the Sunni Muslim world? The main points of the *fatwa* as they translate into medical practice are as follows:

Artificial insemination *with the husband's semen* is allowed, and the resulting child is the legal offspring of the couple. Similarly, in vitro fertilization of an egg from the wife with the sperm of her husband and the transfer of the fertilized embryo(s) back to the uterus of the wife *is* allowed, provided that the procedure is indicated for a medical reason and is carried out by an expert physician. However, since marriage is a contract between the wife and husband during the span of their married lives, no third party should intrude into the marital functions of sex and procreation. This means that a third party donor is *not* acceptable, whether he or she is providing sperm, eggs, embryos, or a uterus (as in surrogacy). The use of a third party is tantamount to *zina*, or adultery, and is strictly prohibited. Furthermore, any child who results from a forbidden method belongs to the mother who delivered him/her. He or she is considered to be a *laqith*, or an illegitimate child, who cannot be officially adopted by the non-biologically-related father.

Because of this strict prohibition on all forms of third-party donation, the establishment of sperm banks is not allowed and is considered “threatening” to the existence of the family and the human race. However, an excess number of embryos can be preserved in “embryo banks” through the process of cryopreservation. The frozen embryos are the property of the couple alone and may be transferred to the same wife in a successive cycle, but only during the duration of the marriage contract. If the marriage contract has come to an end because of divorce or death of the husband, the ex-wife is not allowed to utilize frozen embryos, nor would an ex-husband be allowed to in similar circumstances. Such embryos should be destroyed—given that Islamic legal scholars do not share the Vatican

21. INHORN, *supra* note 1, at 2.

22. Gamal I. Serour, *Bioethics in Reproductive Health: A Muslim's Perspective*, MIDDLE EAST FERTILITY SOC'Y J. 1 (1996). See also Gamal I. Serour & B. M. Dickens, *Assisted Reproduction Developments in the Islamic World*, 36 INT'L J. GYNECOLOGY & OBSTETRICS 74 (2001).

position on life at the moment of conception.²³ In the same spirit, multifetal pregnancy reduction (i.e., selective abortion) is allowed in high-order multiple pregnancies, but only if the prospect of carrying the pregnancy to viability is very small. It is also allowed if the health or life of the mother is in jeopardy.

Finally, the physician is the only qualified person to practice medically assisted conception in all its permitted varieties. If he performs any of the forbidden techniques, he is guilty, his earnings are forbidden, and he must be stopped from his morally illicit practice. However, it is important to note that, to date, no cases of illicit ART practice have been reported in the Muslim world, perhaps because the consequences—for example, moral censure, imprisonment, or other forms of punishment meted out by an Islamic *shari'ah* court—could be severe.

For their part, Egyptian IVF clinics, as well as clinics in other Sunni-dominant countries, strictly adhere to the limitations placed on ARTs, and particularly the explicit prohibition against any form of “donation”—either of biogenetic substances or wombs (as in surrogacy)—outside of the marital union.²⁴ They routinely tell patients that third-party gamete donation and surrogacy are not allowed in their countries, and they may refer difficult cases to Europe and America for additional advice and treatment. Similarly, the vast majority of Sunni Muslim patients are extremely concerned about complying with the provisions of the *fatwa* outlined above. It is often one of their main concerns as they contemplate undergoing any form of ART to overcome infertility.

C. Sunni Muslim Opposition to Gamete Donation

Given the key points of the *fatwa*, most infertile Sunni Muslim couples are most concerned about avoiding third-party gamete donation. They are clear that third-party donation is *haram*, or forbidden by the religion.²⁵ Patient concerns revolve around three important issues: adultery, incest, and lack of biological descent. First, Islam is a religion that can be said to privilege—even mandate—heterosexual marital relations, as clearly shown in the Al-Azhar *fatwa*. Thus, reproduction outside of marriage is considered *zina*, or adultery, which is strictly forbidden in Islam.²⁶ Although third-party donation in IVF does not involve the sexual “body contact” of adulterous

23. B. F. MUSALLAM, *SEX AND SOCIETY IN ISLAM* 40 (Michael Cook ed., Cambridge Univ. Press 1983).

24. See INHORN, *supra* note 1.

25. Fieldwork, *supra* note 1.

26. *Id.*

relations, nor presumably the desire to engage in an extramarital affair, it is nonetheless considered by Islamic religious scholars to be a form of adultery, by virtue of introducing a third party into the sacred dyad of husband and wife.²⁷

The second troubling aspect of third-party donation is the potential for incest among the offspring of unknown donors. Moral concerns have been raised about the potential for a single donor's offspring to meet and marry each other, thereby undertaking an incestuous union of half-siblings.

Finally, third-party donation confuses issues of kinship, descent, and inheritance. As with marriage, Islam is a religion that can be said to privilege—even mandate—biological inheritance, as clearly shown in the Al-Azhar *fatwa*. Preserving the *nasab*, or “origins” of each child—meaning its relationship to a known biological mother and father—is considered not only an ideal in Islam, but a moral imperative.²⁸ The problem with third-party donation, therefore, is that it destroys a child's lineage, and such destruction is immoral in addition to being psychologically devastating.²⁹

Sunni Muslim IVF patients use the term “mixture of relations” to describe this untoward outcome.³⁰ Such a mixture of relations, or the literal confusion of lines of descent introduced by third-party donation, is described as being “dangerous,” “forbidden,” “against nature,” “against God”—in a word, *haram*, or morally unacceptable.³¹ It is argued that donation, by allowing a “stranger to enter the family,” confuses lines of descent in the emphatically patrilineal societies of the Muslim Middle East.³² For Muslim men in particular, ensuring paternity and the “purity” of lineage through “known fathers” is of paramount concern.³³ Thus, a donor child could only be viewed as an *ibn haram*, literally “son of sin.” The child will be deemed illegitimate and stigmatized even in the eyes of its own parents, who will therefore lack the ability to treat the child without emotional ambivalence.³⁴

This firm conviction that parenthood of a “donor child” is an impossibility is clearly linked to the legal and cultural prohibitions against adoption throughout the Muslim world. The Islamic scriptures, including

27. See INHORN, *supra* note 1.

28. Fieldwork, *supra* note 1.

29. *Id.*

30. See INHORN, *supra* note 1.

31. *Id.*

32. *Id.*

33. *Id.*

34. *Id.*

the Qur'an, encourage the kind fostering of orphans, but do not allow legal adoption as it is known in the West.³⁵ As a result, few Muslim IVF patients will contemplate adoption, stating with conviction that it is "against the religion," as clearly reflected in the Al-Azhar *fatwa*.

But to what degree are these *fatwa* declarations—particularly the explicit prohibition on any form of third-party donation of reproductive materials—actually followed by physicians in the Muslim world? A 1997 global survey of sperm donation among assisted reproductive technology centers in sixty-two countries provides some indication of the degree of convergence between official discourse and actual practice.³⁶ In all of the Muslim countries surveyed—including the Middle Eastern countries of Egypt, Iran, Kuwait, Jordan, Lebanon, Morocco, Qatar, and Turkey, as well as a number of non-Middle Eastern Muslim countries including Indonesia, Malaysia, and Pakistan—sperm donation in IVF and all other forms of gamete donation were strictly prohibited. As the authors of this global survey note, "In many Islamic countries, where the laws of Islam are the laws of the state, donation of sperm was not practiced. Artificial insemination with donor sperm is considered adultery and leads to confusion regarding the lines of genealogy, whose purity is of prime importance in Islam."³⁷

IV. SHI'A ISLAM AND IVF

Having said all this, it is very important to point out how things have changed for Shi'ite Muslims since this global survey was published. Shi'a is the minority branch of Islam found in Iran, and parts of Iraq, Lebanon, Bahrain, Saudi Arabia, Afghanistan, Pakistan, and India, and it has been much in the news lately because of the U.S.-led war in Iraq.³⁸ Many Shi'ite religious authorities support the majority Sunni view: namely, they agree that third-party donation should be strictly prohibited.³⁹ However, in the late

35. See MARCIA C. INHORN, *INFERTILITY AND PATRIARCHY: THE CULTURAL POLITICS OF GENDER AND FAMILY LIFE IN EGYPT* (1996) [hereinafter INHORN, *INFERTILITY AND PATRIARCHY*]; see also INHORN, *supra* note 1; see also Amira a-Azhary Sonbol, *Adoption in Islamic Society: A Historical Survey*, in *CHILDREN IN THE MUSLIM MIDDLE EAST* (Elizabeth Warnock Fernea ed., 1995).

36. See Meirow & Schenker, *supra* note 18.

37. *Id.* at 134.

38. JUAN COLE, *SACRED SPACE AND HOLY WAR: THE POLITICS, CULTURE AND HISTORY OF SHI'ITE ISLAM* 1, 4, 173 (2002).

39. Marcia C. Inhorn, *Religion and Reproductive Technologies: IVF and Gamete Donation in the Muslim World*, *ANTHROPOLOGY NEWSLETTER* 46 (2005), available at <http://www.aaanet.org/press/an/0502Inhorn.htm>.

1990s, the Supreme Jurisprudent of the Shi'a branch of Islam, Ayatollah Ali Hussein Khamanei, the successor to Iran's Ayatollah Khomeini, issued a *fatwa* effectively permitting donor technologies to be used.

A. The Fatwa of Ayatollah Khamanei

Ayatollah Khamanei, who succeeded Ayatollah Khomeini after his death as the "Leader of the Revolution," was promoted in 1994 to the rank of *marja'*, or "source of emulation," defining him as a person embodying the principle of religious legitimacy and thus guaranteeing him a large following of Shi'ite disciples.⁴⁰ To that end, Ayatollah Khamanei now regularly issues *fatwas* on a variety of subjects, often in answer to questions about new topics not mentioned in the Islamic scriptures. As shown below, his *fatwa* is presented in a question-and-answer format, quite different from the Al-Azhar *fatwa* cited above.⁴¹ Unlike the Al-Azhar *fatwa*, the author obtained this *fatwa* in an Arabic-language anthology of *fatwas* issued by Ayatollah Khamanei. The *fatwa* was published in Arabic and was carefully translated into English by the author's research assistant, who was a graduate student at American University of Beirut (AUB) at the time (in 2003). It is unclear whether the original *fatwa* was issued by Ayatollah Khamanei in Arabic or in Farsi, the latter of which is the language of Iran. If the original text was in Farsi, then the Arabic publication of the *fatwa* was, in fact, a translation. This means that the following *fatwa* may be a "double translation" from Farsi into Arabic, then from Arabic into English. Nonetheless, since most Muslim clerics, both Sunni and Shi'ite, read Arabic (i.e., the language of the Qur'an), this *fatwa* may, in fact, have been issued by Ayatollah Khamanei in Arabic. The exact language of the original *fatwa* remains unclear. Having said this, the translation of the Khamanei *fatwa* from Arabic into English is as follows:

1. Questions

- (a) Is IVF acceptable in case the sperm and egg came from the legally married couple?
- (b) Suppose it is acceptable, could a foreign doctor do the operation? Would the newborn be considered the child of the married couple who collected the sperm and egg?
- (c) Suppose IVF is not acceptable, could it be an exception when it

40. FARIBA ADELKHAH, BEING MODERN IN IRAN 117 (Jonathan Derrick trans., Columbia University Press 2000) (1998).

41. Ayatollah Ali Hussein Khamanei, Answers to the Reference Questions, Courtesy of Ali Hussein Khamanei: The Accomplishments Vol. 1, Dar Il-Islamiyya (n.d.) This *fatwa* was obtained in Beirut, Lebanon, during research in 2003. It was translated from Arabic into English for the author at American University of Beirut.

comes in the form of a ‘marriage savior’?

2. Answer

Doing the IVF operation is acceptable under the cited circumstances. However, one should avoid getting involved in issues that are considered *haram* (forbidden) in Islamic Law—i.e., the foreign (other than her husband) doctor should not perform the IVF procedure if it involves touching or seeing the newborn.

3. Question

In some marriages where the woman does not have any eggs necessary for fertilization to occur, the couples are sometimes forced to separate or face marital and psychological disputes because their case is untreatable and they can’t have any children. In this case, would it be acceptable to make use of another woman’s egg and fertilize it with the husband’s sperm outside of the uterus and then transfer the embryo back into the wife’s uterus?

4. Answer

Although egg donation is not in and by itself legally forbidden, the newborn would be considered to be the child of the person who collected the sperm [i.e., the husband] and the egg donor, as well as the surrogate [i.e., infertile] mother. It follows that both the sperm collector [the husband] and egg donor have to apply the exceptions cited within the religious codes regarding parenting.

5. Questions

- (a) If the sperm was taken from the husband and, after his death, it was fertilized by the wife’s egg and implanted in her uterus, would this be considered legal?
- (b) Would the newborn be considered the husband’s son and would he bear his name legally?
- (c) Does the child inherit from the owner of the sperm [husband]?

6. Answer

It is okay to do the cited procedure and the newborn would be considered the child of the egg and uterus bearer and the sperm owner, but he would not inherit anything from him.

7. Question

Is it okay to fertilize a woman’s egg with a donor sperm in case her husband has some infertility problems, and then implant the fertilized embryo back into her uterus?

8. Answer

It is legally not forbidden to fertilize a woman’s egg with a sperm donor in and by itself, but the opposite gender should avoid touching or seeing the child [i.e., naked], as these are considered *haram*. In any case, a child born this way would not carry the name of his biological father, but rather that of the sperm owner [i.e., infertile father] and the

egg and uterus carrier. However, in such instances, one should abide by the exceptions that have to do with inheritance and veiling issues.

B. Key Points of Disagreement over the Khamanei Fatwa

Clearly, Ayatollah Khamanei's *fatwa* declaration differs in both style and substance from that of the Grand Sheikh of Al-Azhar University. Whereas the Al-Azhar *fatwa* was issued well before IVF became a reality in the Muslim world, and was thus intended to presage and prescribe future uses of ART technologies, Ayatollah Khamanei's *fatwa* was issued in response to real-world questions about the uses of IVF, including both egg and sperm donation in the Shi'ite-dominant country of Iran. Furthermore, reflecting differences between these two Muslim sects, the Al-Azhar *fatwa* relies heavily on scriptural sources of authority, harkening back repeatedly to the Qur'an, the *hadith*, and earlier cases of Islamic jurisprudence. Such scriptural reliance is clearly absent in Ayatollah Khamanei's *fatwa*. Instead, Ayatollah Khamanei relies almost exclusively on the practice of *ijtihad*, or individual religious reasoning,⁴² which leads him to come to his own conclusions about the appropriateness of various forms of gamete donation. Unlike the Al-Azhar *fatwa*, the major feature of Ayatollah Khamanei's *fatwa* is that it permits both egg and sperm donation, although it clearly states that *both* the donor and the infertile parents must abide by the religious codes regarding parenting (suggesting that donor anonymity is, in fact, impossible). Furthermore, the donor child can only inherit from the sperm or egg donor, as the infertile parents are considered to be like "adoptive" parents, who "own" the child but not as a legal heir. Finally, an infertile parent who is not biologically connected to a child produced of donor eggs or sperm is, in theory if not in practice, "allowed" to that child as a sexual or marriage partner. Thus, Ayatollah Khamanei points to the "exceptions" that must be made in the realm of parenting—namely, veiling of women and avoidance of nakedness—in order to prevent feelings of sexual attraction or desire from developing between non-biologically related parents and offspring of the opposite sex.⁴³

Even though the official Khamanei *fatwa* on gamete donation is brief and fairly straightforward, it has led to considerable complexities surrounding the uses of ARTs in the Shi'ite Muslim world. Because all Shi'ites—not just Ayatollah Khamanei—practice *ijtihad*, or individual

42. See COLE, *supra* note 38.

43. See INHORN, *supra* note 1.

religious reasoning in a way that is not practiced in Sunni Islami,⁴⁴ various Shi'ite religious authorities have come to their own conclusions about sperm and egg donation, sometimes directly opposing Ayatollah Khamanei's *fatwa* ruling. For example, there are currently major disagreements and debates within the Shi'ite community about whether donation is permissible at all if the donors are anonymous (as is usually the case in the West), and whether a donor child should follow the name of the infertile father or the sperm donor in cases of a known donor.

Furthermore, to avoid the issue of *zina*, or adultery, the time-honored Shi'ite practice of *mut'a*—or temporary marriage—is being invoked, even though *mut'a* is *not* recognized by Sunni religious authorities as a legal form of marriage practice.⁴⁵ Namely, some Shi'ite religious authorities are arguing that the husband of an infertile woman must do a temporary *mut'a* marriage with the egg donor, then terminate the marriage contract after the embryo transfer (within twenty-four to seventy-two hours), in order to avoid *zina* through a form of temporary polygyny. In such cases of *mut'a*, the egg donor is the legal mother (for purposes of inheritance), but she effectively releases her legal claims on the child once the *mut'a* marriage has ended. At that point, the infertile mother becomes the child's mother, akin to an "adoptive" mother.⁴⁶ However, among Shi'ites, *mut'a* marriages are only available to men; namely, a married Shi'ite Muslim woman cannot do a *mut'a* marriage with a sperm donor, because a Muslim woman cannot marry two men at the same time.⁴⁷ In theory, only widowed or otherwise single women should be able to accept donor sperm, in order to avoid the implications of *zina*, or adultery. However, in the Muslim countries, single motherhood of a donor child is unlikely to be socially acceptable.

The issue of sperm donation is particularly thorny. In a recent reversal of Ayatollah Khamanei's original *fatwa*, which allowed sperm donation for cases of male infertility, sperm donation has been made officially illegal in Iran since August 2003.⁴⁸ Namely, a law on gamete donation passed in the Iranian parliament (*majlis*) and approved by the Guardian Council (a religious "watch-dog" body that endorses every bill before it becomes law) has restricted gamete donation to married persons.⁴⁹ Even though the law is

44. See COLE, *supra* note 38.

45. SHAHLA HAERI, *LAW OF DESIRE: TEMPORARY MARRIAGE IN SHI'I IRAN* (1989).

46. INHORN, *supra* note 1.

47. *Id.*

48. Soraya Tremayne, *The Moral, Ethical and Legal Implications of Egg, Sperm and Embryo Donation in Iran*, Paper presented at the University of Michigan, Ann Arbor (May 2005).

49. *Id.*

brief (less than one page), it states clearly and succinctly who can and cannot donate and receive gametes. Egg donation is allowed, as long as the husband marries the egg donor temporarily—thereby ensuring that all three parties are married. Sperm donation, on the other hand, is legally forbidden, because a sperm donor cannot temporarily marry an already married woman whose husband is infertile.⁵⁰ However, quite interestingly, embryo donation—which involves both sperm and egg from another couple—is allowed in order to overcome both male and female infertility. Because an embryo comes from a married couple and is given to another married couple and is akin to adoption, it is considered *hallal*, or religiously permissible.⁵¹ Similar to a case of adoption, an infertile Iranian couple must obtain a medical certificate of their infertility (despite overall physical and mental health) and present it to a court of law in order to receive donated embryos.⁵² Iran, it should be noted, is the only Muslim country in which Western-style adoption is allowed.⁵³ It is also the only Muslim country to have recently allowed surrogacy, even though, so far, there is no law either endorsing or forbidding the practice of so-called “rented mothers.”⁵⁴ Indeed, according to anthropologist Soraya Tremayne, who has documented the great “flexibility” being enacted in Iranian IVF clinics,

The [ARTs] are expanding so fast and demand for them by the patient is so high that keeping pace with them has become a major task, not just for the service providers, but also for the ruling clerics, who have to legislate to legitimize their use. The senior clerics are often faced with a *fait accompli* and find themselves catching up with the technology, rather than determining its use legally.⁵⁵

V. THE EFFECTS OF *FATWAS* ON MARRIAGE AND GENDER RELATIONS

Given all of these religious/legal complexities, those married infertile Shi'ite couples who are *truly* concerned about carrying out third-party donation according to religious guidelines find it difficult to meet these various requirements, particularly regarding sperm donation. Yet, in Iran and Lebanon, both Middle Eastern countries with Shi'ite Muslim majorities,

50. *Id.*

51. *Id.*

52. *Id.*

53. *Id.*

54. Tremayne, *supra* note 48.

55. *Id.*

at least some Shi'ite couples *are* beginning to receive donor eggs, donor embryos, and even donor sperm (at least in Lebanon), as well as donating their gametes to other infertile couples.⁵⁶ For infertile Shi'ite couples who accept the idea of donation, the introduction of donor technologies is being described as a "marriage savior," helping to avoid the "marital and psychological disputes"—which were noted in the Khamanei *fatwa*—that may arise if the couple's case is otherwise untreatable.⁵⁷

Indeed, in both Iran and Lebanon, the recent Khamanei *fatwa* allowing egg donation has been a great boon to marital relations. There, both fertile and infertile men with "old" wives are lining up at IVF clinics to accept the eggs of donor women.⁵⁸ Some of these donors are other IVF patients, and some are friends or relatives. And in at least one Shi'ite IVF clinic in Lebanon, some are young college-aged women being recruited from the United States,⁵⁹ who are anonymously donating their eggs to conservative Shi'ite couples, including, presumably, members of Hizbullah, which is officially condemned by the U.S. administration as a terrorist organization! Furthermore, quite interestingly, in multi-sectarian Lebanon, the recipients of these donor eggs are not necessarily only Shi'ite Muslim couples from Lebanon. Some Shi'ite couples from Sunni-dominant countries where egg donation is not practiced—as well as some *Sunni* Muslim patients from Lebanon and from other Middle Eastern Muslim countries—are quietly "saving their marriages" through the use of donor gametes, thereby secretly "going against" the dictates of Sunni Muslim orthodoxy.⁶⁰

But what about the millions of Sunni Muslim couples who, in the absence of either adoption or gamete donation, have no choice but to turn to IVF with their own gametes in order to solve their infertility problems? In the absence of third-party gamete donation, women in particular face considerable marital risks, especially in the era of intracytoplasmic sperm injection (ICSI), the newest ART designed to overcome male infertility, but which has ironically increased the potential for divorce in the Muslim

56. *Id.* See also Marcia C. Inhorn, *Middle Eastern Masculinities in the Age of New Reproductive Technologies: Male Infertility and Stigma in Egypt and Lebanon*, MED. ANTHROPOLOGY Q. 18 (2004). See also Diane M. Tober, Shi'ism, Pragmatism, and Modernity: Islamic Bioethics and Health Policy in the Islamic Republic of Iran, Paper presented at the University of Michigan, Ann Arbor (Apr. 2004).

57. Fieldwork, *supra* note 1. This is based on the author's recent fieldwork carried out in Beirut, Lebanon in 2003.

58. *Id.*

59. *Id.*

60. *Id.*

world.⁶¹ Namely, with ICSI, infertile men with very poor sperm profiles—even azoospermia, or lack of sperm in the ejaculate—are now able to produce biological children of their own, through the microscopic injection of their weak sperm directly into the ova.⁶² The wives of many of these men, who have “stood by” their infertile husbands for years, even decades in some cases, may have grown too old to produce viable ova for the ICSI procedure. Thus, what ICSI requires is high-quality ova, despite low-quality sperm. In the absence of egg donation, infertile Muslim couples with a reproductively elderly wife face four difficult options: to remain together permanently without children; to legally foster an orphan, which is rarely viewed as an acceptable option; to remain together in a polygynous marriage, which is rarely viewed as an acceptable option by women themselves; or to divorce so that the husband can have children with a younger, more fertile partner.

Empirical research among infertile Muslim couples shows that the first option is the most common—namely, infertile Muslim husbands and “forty-something” wives often love each other deeply, and remain together in long-term marriages without children.⁶³ Thus, divorce is not the immediate consequence of infertility that it is stereotypically portrayed to be in the Muslim world (where divorce rates are generally half the fifty percent rate in the United States). However, because of the Sunni Islamic restrictions on the use of donor eggs, at least some Muslim men *are* choosing to divorce or take a second wife, believing that their own reproductive destinies lie with younger, more fertile women.

VI. CONCLUSION

Behind the closed doors of IVF clinics throughout the Muslim world, ARTs are now part and parcel of everyday life, with thousands of Muslim test-tube babies, both Sunni and Shi’ite, being born to infertile couples every year. Indeed, the emergence of IVF and ICSI in the Muslim Middle East—and the even more recent introduction of donor technologies in Shi’ite-dominant Iran and Lebanon—has led to a fascinating form of medical practice that is reshaping the gender dynamics of infertile marriages.

Fatwas issued by leading Sunni and Shi’ite religious authorities have

61. See INHORN, *supra* note 1.

62. P. Devroey et al., *Do We Treat the Male or His Gamete?*, 13 HUM. REPROD. 17–18 (1998). See also A. Kamischke & E. Neischlag, *Conventional Treatments of Male Infertility in the Age of Evidence-based Andrology*, 13 HUM. REPROD. 62–75 (1998).

63. INHORN, INFERTILITY AND PATRIARCHY, *supra* note 35; see also INHORN, *supra* note 1.

clearly condoned the use of ARTs to overcome marital infertility, in keeping with the Islamic mandates to procreate within marriage and to seek medical solutions to human suffering. However, clear differences have emerged between these two sects regarding the morally appropriate limits of reproductive technologies. In the Sunni Muslim world, the use of both IVF and ICSI has clearly led to an entrenchment of deeply held religious beliefs about the importance of biologically based kinship, family life, and parenthood—glossed in the language of *nasab*, or “blood relations.” This concern with biological parenthood has led to the destabilization, in some cases, of marriages that cannot yield biological offspring.

Yet, the globalization of these technologies to other parts of the Shi’ite world has fundamentally altered understandings of the ways in which parenthood *can* be achieved and, hence, the ways in which marriages *can* be saved through the uses of assisted reproductive technologies. Indeed, for Shi’ite Muslims, the effect of recent *fatwas* has been a rethinking of traditional notions of biological kinship, parenthood, and marital commitments. That the “brave new world” of third-party donation has been introduced to the Muslim world by otherwise conservative, male, Iranian Shi’ite religious leaders may come as a surprise to Westerners. However, the Shi’ite practice of *ijtihad* has led, at times, to frankly “adventurous” opinions among Shi’ite religious leaders, who sometimes diverge considerably from their counterparts in the Sunni world. As noted by Tremayne:

Ijtihad has been used extensively in the present day Iran by religious leaders, and has allowed them to make substantial use of technology in all spheres of life. Islamic laws faced with modernity and change are constantly debated, revised and conclusions reached among the senior jurists. And, if approved, *fatwas* (religious decrees) are given to legitimize the use and adjustment to new situations, be it medicine, technology or other matters.⁶⁴

Thus, in Iran, Shi’ite clerics’ use of *ijtihad* has allowed for an award-winning population program, transgender surgery, and the endorsement of ARTs, including donor technologies.⁶⁵ Indeed, in the realm of infertility, it is these Shi’ite opinion makers who, through their *fatwas*, have quite consciously improved gender equity through the acceptance of egg donation, surrogacy, and adoption as alternate but legitimate ways to save infertile marriages.

In short, in the Middle Eastern Muslim world of ARTs, Egypt was once

64. Tremayne, *supra* note 48.

65. *Id.*

the nation “in the forefront,” but Iran and Lebanon are now arguably the countries “to watch” for the future of legal and bioethical decision making. It is in these two countries, with Iran clearly taking the lead, that we can expect to see even newer technologies—such as cytoplasmic transfer, embryonic stem cell research, and even human cloning—being attempted and carried out, causing social and legal transformations that are potentially profound.

Appendix I.

*Fatwa by Gad el Hak ali Gad el Hak, Al-Azhar University,
Cairo, Egypt*

Lineage and relationship of marriage are graces of Allah to mankind, highly appreciated and they are basis of judgment (It is He who has created man from water then has he established relationships of lineage and marriage for they Lord/ has power (over all things) "Furqan or The Criterion 59, therefore origin preserve is a most essential target of Islamic law.

In this concern Scholar Elghazali stated: (Allah's goal is to prevent harm and cause welfare, however human beings are to gain their benefit upon accomplishment of objectives. The benefit is to observe targets of Islamic law which are five. Is to preserve beings religion, themselves, minds, descendants and money. Hence any act implies preserve of there five fundamentals is a benefit and the contrary for any act which jeopardizes them is then a harm).

Therefore Allah permitted marriage and prohibited fornication to keep the origin "And among his signs Is this, that he created for you mates from among yourselves, that ye may Dwell in tranquillity with them, And he has put love and mercy between your (hearts).

Verily in that are signs for those who reflect "Rum the Roman Empire 21.

"Nor come nigh to adultery: For it is a shameful (deed), and an evil, opening the road (To other evils)". Esraa, children of Israel 32.

A legitimate child will grow and be raised by his parents in the best manner they can afford while an illegitimate one is a shame for the mother and her people, neglected in the community and will then turn into a disease.

Islamic scholars though discussed illegitimate children in books of Islamic law explained that they are human beings deserve to be brought up properly and taken care of so as to stimulate what is best in them and avoid their evilness "And if any one saved a life, it would be as if he saved the life of the whole people" Maida, The Table 31.

As for proper origin Islam is highly concerned and hence it was coded in a way to call for marriage and guarantee stability of the family. Generally Islam organized people's life in an appropriate pattern with justice and equity.

There are few rules sat by Islam to ensure appropiateness of origin

which will be represented in the following: -

- Adultery is forbidden
- A compulsory period during which a divorcee should not remarry (idatt) (to ensure she is not already pregnant which confuses father's identification) .
- Adoption is forbidden (by Quran definition) for purposes of origin protection and family rights preservance 'Nor has he Made your adopted sons your sons. Such is (only) your mouths. But God Tells (you) the truth, and He shows the (right) way. Call them by (the names of) their fathers: that is Juster in the sight of God. But if you know not their father's (names, call them) your brothers in faith, or your Maulas "Ahsab or The Confederates 4,5.

By this Islam is not to approve who has no origin or force him on others.

Islam organized interrelation of a man and a woman emphasized that it should be in form of proper marriage so as to protect origins and respect a sperm of which a child is created "Now let man but emmittedProceeding from between. The backbone and the ribs "Tariz. The Night Visitant 5,6,7 "Verily we created Man from a drop of mingled sperm "Dahr, or Time. Insan, Man 2.

However a sperm is not to acquire shape until it is introduced to a woman's womb ready to receive it, and that could be through a sexual body contact (intercourse) the child will be called after his father since aspect of marriage is present. However, there are cases where a man's sperm could be introduced to a woman's womb through other means but body contact.

Islamic scholars elaborated in their books on this issue ad mentioned several examples where a woman was able to get and introduce a husband or a master sperm into her womb which consequently will require (idatt) a waiting period before she remarries and creates lineage.

On the light of the above mentioned we will discuss several issues in the following: -

Marriage noble objective is reproduction so as to keep mankind, moreover body contract among husband and wife is based on natural desire.

Thus, body contact (intercourse) is the basic and only means allows a sperm to reach the proper location as per Allah's will.

- If pregnancy could not occur through normal body contact (intercourse) due to some illness, it is then permissible to impregnate a woman by her husband's sperm through medical assistance (provided toobe undoubtedly her husband's and not any other man or animal). A waiting period is then necessary and lineage is proved based on the

previously mentioned examples.

- If the husband is impotent, it is unlawful to have a stranger sperm donor. This consequently will confuse origins, furthermore the method implies adultery which is strictly unlawful by Quran and Sunna (what has been taken from Prophet Mohamed, peace be upon him),
- If a woman's ovum to be impregnated by a man's sperm (not the husband), then have the sperm donor's wife act as surrogate, it is then considered adultery (confuses origin) as well as unlawful.

However, even though it is the husband's sperm which is not to acquire shape unless by Allah's permission upon unity with the wife's ovum, and since this aspect is not present in the case discussed, the wife then is not a husband's tilth as she should be as Allah says "Your wives as a tilth unto you" Baqara or The Heifer from 222. A woman shall not be pregnant unless through a normal legal intercourse with her husband or by introducing his sperm into her womb to acquire shape as Allah Says "He makes you, In the wombs of your mothers, In stages one after another In three veils of darkness" Zumar or The Crowds.

Hence, in the case discussed ovum is not the wife's which implies unlawful adultery.

- In vitro fertilization: -

If a wife's ovum is impregnated by her husband's sperm outside the womb in a (tube), then planted back to the womb with no doubts or confusion about sperm donor (human or animal) due to medical requirements as illness of the husband or wife which might affect their relation.

However, if a trustworthy physician recommends in vitro fertilization and shall be responsible for its appropriateness. Thus it is permissible and obligatory as treatment for a woman who has pregnancy impediments. Furthermore Prophet Mohamed. – Peace be upon him – mentioned the necessity to seek remedy for any disease, and sterility is a disease that might be curable, therefore to seek lawful treatment is then permissible

- If the case was full surrogacy in which an animal's womb will be used temporarily to bear and allow an impregnated ovum go partially through the stages of growth which are mentioned in Quran. "Then we placed him as (a drop of) sperm in a place of rest, firmly fixed, then we made the sperm into a clot of congealed blood, then of that clot we made a (foetus) lump, then we made out of that lump bones and clothed the bones with flesh, then, we developed out of it

another creature. So blessed by God, the best to create!" Muminun, the believers 13, 14, it will definitely acquire characteristics of the bearing animal according to genetic factors which were previously proven by Quran" should he not know he that created ? "Mulk of The Dominion 14. . Our Prophet – peace be upon him – instructed us to choose the best woman as a wife for the sake of our children and to avoid beautiful women who grew up in a corrupted environment for genetic purposes as well as ensuring a healthy atmosphere to bring up children.

The above mentioned clarifies even more how an animal's surrogacy is to affect the born creature who will not be of a human nature. Therefore a person who uses this method is to ruin, Alla's Creation, Allah Says "So fear God As much As ye can" Tagabun or the mutual loss and gain 16.

According to one of Islamic law fundamentals is to Prioritize harm prevention than well being provision.

We conclude that this method of medically assisted reproduction is an absolute cause of evil therefore unlawful.

- As for the father who accepts one of the previously mentioned unlawful means of medically assisted reproduction he is to be considered one who lost his dignity. Any child who is begotten through one of the stated cases is illegitimate for it is certain that sperm donor is not the father (adultery). Accordingly the child is a foundling and is to be called after his mother.
- Concerning the position of a physician who undertakes on if the unlawful case

Islam allowed lawful treatment and the physician being the means to do so according to his experience, he is then responsible in case of negligence or seek an unlawful (by Islam) method. Therefore a physician responsible for medically assisted reproduction should study the method thoroughly that it should not be unlawful, or else he will be sinful for whatever led to an unlawful act is consequently unlawful. Quran and Sunna indicated very important principle which is cause prevention "Revile not ye those whom they call upon besides God, lest they out of spite revile God in their ignorance "Anam, The cattle 108. The principles very clear as per the herein before verse (Aya), it calls not to curse polytheist Gods in order not to allow them take it as a cause and curse Allah. Prophet Mohamed – peace be upon him –said "May Allah damn alcohol, person who drinks it, who offers it, who sells it, who buys it, who squeezes it, who carries it and whom it is carried for". That proves one should not even assist in an unlawful act. Other example is that Islam forbids a man to study a woman's beauty or be

alone with a woman since that could be an atmosphere that causes adultery.

We herein by conclude that based on the above mentioned verses of Quran, definitions of Sunna and examples, a physician who conducts a medically assisted reproduction in an unlawful form is at fault as well as his earning is bad.

A physician should only offer lawful treatment to husband and wife wishing to have a legitimate child and establish a family.

- Furthermore it is emphasized that medically assisted reproduction is only lawful among a husband and a wife but to use such experiments so as to improve race is absolutely unlawful. Instead of establishing a sperm Bank taken from best selection of men then use it to impregnated also well selected women, Islam instructed to chose the best of either husband or wife from all aspects (health ethics, mind – so forth). It sat lawful criteria to keep a strong and healthy mankind generation

Finally, human being is not to be taken as a means of experiment for Allah put him in a respective position.

“O ye who believe, give your response to God and his Apostle, when he calleth you to that which will give you life, and know that God cometh in between a man and his heart, and that it is he to whom ye shall (all) be gathered and fear tumult or oppression, which affecteth not in particular (only) those of you who do wrong: And know that God is strict in punishment “Anfal, The Spoils of War 24, 25.