STATUS OF THE CHILD OF ASSISTED REPRODUCTIVE TECHNOLOGY (ART) IN ISLAMIC LAW AND THEIR RIGHTS TO INHERITANCE

Mohi Uddin

ABSTRACT

Purpose: Childlessness involves suffering, bearing, nursing, rearing, sharing their future, and sharing their goals—basic human needs. This study examines the legal status of ART child and their rights of inheritance under Islamic law. After reviewing the Quran, Hadith, Ijma, Quis, and the opinions of Islamic scholars and schools, it proposes frameworks for Islamic approaches.

Methods: This study used doctrinal legal research as its methodology and approach by describing data findings, both primary and secondary data, that have been processed and analyzed, and access to legal texts and materials, such as adequately cited books, journals, articles, conference and seminar papers, statutes, case law, and online resources.

Results: This study examined the legal standing of children born using artificial reproductive technology (ART) in Islamic law, specifically on their inheritance rights under the different schools of Muslim laws, especially Sunni and Shia schools, and found defects in existing methods and recommended suggestion the possible frameworks for Islamization and ensure rights of ART child.

Conclusion: Islam allows its followers to use modern innovations and techniques like ART. However, infertile couples who need it to save their family and lineage may benefit. If the semen comes from a legitimate Muslim spouse, ART does not change fatherhood or inheritance in Islamic law. Unnatural fertilizations are questioned for a child conceived using a stranger's semen. Being paid to fertilize and implant the third party's sperm or eggs in the wife's uterus or another woman is adultery and is forbidden.

Keywords: ART, islamic law, inheritance, legitimacy, artificial.
ESTATUTO DO FILHO DA TECNOLOGIA REPRODUTIVA ASSISTIDA (ARTE) NO DIREITO ISLÂMICO E OS SEUS DIREITOS À HERANÇA

RESUMO

Propósito: A falta de filhos envolve sofrimento, sustentação, enfermagem, criação, compartilhamento de seu futuro e compartilhamento de seus objetivos - necessidades humanas básicas. Este estudo examina o status legal da criança ART e seus direitos de herança sob a lei islâmica. Depois de rever o Alcorão, Hadith, Ijma, Quis e as opiniões de estudiosos e escolas islâmicos, propõe estruturas para abordagens islâmicas.

Métodos: Este estudo usou a pesquisa jurídica doutrinal como sua metodologia e abordagem, descrevendo os achados de dados, tanto primários como secundários, que foram processados e analisados, e acesso a textos e materiais legais, como livros, revistas, artigos, artigos de conferências e seminários devidamente citados, estatutos, jurisprudência e recursos on-line.

Resultados: Este estudo examinou a situação legal das crianças nascidas usando tecnologia reprodutiva artificial (ART) na lei islâmica, especificamente sobre seus direitos de herança sob as diferentes escolas de leis muçulmanas, especialmente escolas sunitas e xiitas, e encontrou defeitos em métodos existentes e recomendou a sugestão de possíveis estruturas para a islamização e garantir os direitos da criança ART.

Conclusão: O Islã permite que seus seguidores usem inovações modernas e técnicas como a ARTE. No entanto, casais inférteis que precisam disso para salvar sua família e linhagem podem se beneficiar. Se o sêmen vem de um cônjuge muçulmano legítimo, ART não muda a paternidade ou a herança na lei islâmica. Fertilizações não naturais são questionadas para uma criança concebida usando sêmen de um estranho. Ser pago para fertilizar e implantar esperma ou óvulos de terceiros no útero da esposa ou de outra mulher é adultério e proibido.

Palavras-chave: ARTE, lei islâmica, herança, legitimidade, artificial.

SITUACIÓN DEL NIÑO DE LA TECNOLOGÍA DE REPRODUCCIÓN ASISTIDA (ART) EN LA LEGISLACIÓN ISLÁMICA Y SUS DERECHOS A LA HERENCIA

RESUMEN

Propósito: La falta de hijos implica sufrir, soportar, amamantar, criar, compartir su futuro y compartir sus metas: necesidades humanas básicas. Este estudio examina la situación legal de los niños con TAR y sus derechos de herencia bajo la ley islámica. Después de revisar el Corán, el Hadiz, el Ijma, el Quis y las opiniones de los académicos y escuelas islámicas, propone marcos para los enfoques islámicos.

Métodos: Este estudio utilizó la investigación jurídica doctrinal como su metodología y enfoque al describir los hallazgos de los datos, tanto primarios como secundarios, que se han procesado y analizado, y el acceso a textos y materiales legales, como libros, revistas, artículos, documentos de conferencias y seminarios adecuadamente citados, estatutos, jurisprudencia y recursos en línea.

Resultados: Este estudio examinó la situación legal de los niños nacidos utilizando tecnología reproductiva artificial (ART) en la ley islámica, específicamente sobre sus derechos de herencia bajo las diferentes escuelas de leyes musulmanas, especialmente las escuelas sunitas y chiitas, y encontró defectos en los métodos existentes y sugirió los posibles marcos para la islamización y garantizar los derechos de los niños con ART.
Conclusión: El Islam permite a sus seguidores utilizar innovaciones y técnicas modernas como el ARTE. Sin embargo, las parejas infértiles que lo necesitan para salvar a su familia y linaje pueden beneficiarse. Si el semen proviene de un cónyuge musulmán legítimo, el TAR no cambia la paternidad o la herencia en la ley islámica. Las fertilizaciones no naturales se cuestionan para un niño concebido usando semen de un extraño. Ser pagado para fertilizar e implantar el esperma o óvulos de la tercera parte en el útero de la esposa u otra mujer es adulterio y está prohibido.

Palabras clave: ARTE, derecho islámico, herencia, legitimidad, artificial.

1 INTRODUCTION

Childlessness is grave suffering. The necessity for bearing children, nursing them, raising them, sharing their future, and sharing their dreams is enormous; it is a basic human prerequisite. A key revolution in 1978 was the successful pregnancy and birth of a girl due to in vitro fertilization (IVF). That achievement led to several technological innovations that indicated a new "non-coital reproduction" era. These approaches are collectively called "Assisted Reproductive Technologies (ARTs)." This process involves obtaining the semen from a man to fertilize a woman to induce fertilization and produce a child if Allah so wishes. The semen is sometimes obtained from the woman's husband, but it is more often obtained from a donor (third party).

Through the conception of a child via ART Baby (Non-natural Fertilization), married couples may not face any issues or problems regarding fatherhood and right of inheritance under Islamic Law if such sperm is that of the legal husband of a valid Muslim marriage. Another method of fertilization is surrogacy, which creates difficulties regarding the child's legitimacy and inheritance rights. In contrast, the conception of a child through the semen of a stranger is accomplished despite the difficulties of fatherhood, the right of the child so perceived to inherit under the law, and even despite educating doubts on the legitimacy of the processes of non-natural fertilization. To summarize, Islam not only permits but also encourages married couples to seek treatment for infertility with Arts. As a result, among other things, this research provides an analysis of the legality of test tube babies (non-natural fertilization) in accordance with Islamic law, as well as the effects of such fertilization on the status of the child conceived from that place, as well as his right of inheritance under Islamic law in various methods of assisted reproductive technologies (ARTs).
The main aim of this research is to determine the Status of the ART Child and their Rights to Inheritance under Islamic Law. The work aims to achieve the following specific objectives:

a) To classify and discuss the modern legal issues relating to the status of the ART Child and their Rights to Inheritance under Islamic Law.

b) To scrutinize and examine the legitimacy of non-natural human Reproduction under Islamic law.

c) To critically scrutinize and examine the impact of ART on the rights and responsibilities of parents towards their children begotten out of artificial human reproduction.

d) To critically examine and analyze children's inheritance rights that have been derived from artificial human reproduction under Islamic law.

This research work would be beneficial to all those involved in child rights protection, such as the government in the formulation of law and policy on child rights in Muslim countries, to court judges in their application of Islamic Family Law, to Advocates in supervision briefs on reproductive rights and freedom; to parents and guardians as well as families in determining their rights and responsibilities towards their children begotten out of artificial human reproduction; to lecturers and students of law who desire to pursue a career in this field, etc. Moreover, this study is justifiable as the area of research raises legal and ethical questions about whether or not these innovative scientific methods of human reproduction are inimical to Islamic law, especially the institution of family formation, and whether they contradict the basic notion of lineage and child legitimacy in Islamic Law. Thus, the study would benefit medical practitioners who engage in these unorthodox ways of artificial human reproduction, legal practitioners who defend and prosecute cases bordering on the rights of the child, and judges who determine the claims on such a child. Other targeted beneficiaries are the child himself, the couples, and the third parties that are usually involved in claims on who bears his own. They probably will be in the custody of the child.

2 THEORETICAL FRAMEWORK

In this study, artificial human reproduction techniques such as surrogacy, artificial insemination, in vitro fertilization, sperm/ova banks, egg transfers, embryo-
adoption/embryo nation, etc., are examined from the standpoint of Islamic law and rights of inheritance of the Assisted Reproductive Technology (ART) children. As a result, the focus of this study is restricted to a comparison of the position of Islamic law with artificial or scientific means of human reproduction as a right to reproductive freedom.

3 METHODOLOGY

This study used doctrinal legal research as its methodology. Access was granted to legal texts and materials, such as properly cited books, journals, articles, conference and seminar papers, statutes, case law, and online resources.

4 DISCUSSION AND RESULTS

4.1 CONCEPT OF ARTIFICIAL REPRODUCTION

Artificial reproductions are techniques for creating offspring with the aid of science. Despite not being a traditional or natural method of having children, it falls under the category of reproductive rights. The right to reproductive health and the right to reproductive self-determination are two main elements that make up reproductive rights.

4.2 COMMON METHODS OF ARTIFICIAL REPRODUCTION

The term "artificial human reproduction" refers to human reproduction with the aid of technology. It consists of the following:

a) Artificial Insemination (AI),
b) In-vitro fertilization (IVF),
c) Sperm donor/ova bank,
d) Embryo adoption,
e) Egg transfer,
f) Surrogate parenting,
g) Human cloning,
h) genetic engineering, among others.
Though not all the methods of artificial or scientifically assisted human reproduction mentioned above will be covered in this section, each approach will be covered in turn so that we may understand how it works.

4.2.1 Artificial Insemination

Artificial insemination is "the implantation of sperm into the woman’s vagina or uterus by means other than sexual contact. "The sperm could be from the woman's husband (artificial insemination by the husband), partner (AIP), or outside donor (AID) (Bone, S. 2012).

Artificial insemination, according to Black's Law Dictionary, is a "method by which a female is impregnated through the injection of sperm from a donor other than her husband and other than through sexual intercourse" (Garner, B. A. 2019). Based on these two definitions, it can be said that artificial insemination is an unnatural way to get pregnant that uses science to get genetic material from a man and a woman, whether they are husband and wife or just third-party donors, in order to cure infertility and fill the need for a child. Artificial insemination, on the other hand, is the medical practice of encouraging pregnancy in women who have had difficulty becoming pregnant.

It can also be said to be a procedure whereby a semen specimen is placed in a syringe attached to a narrow tube or catheter is inserted with great care into the cervical canal, and semen is slowly injected into the uterus. Hence, it is a process whereby semen is taken from the man and injected into the uterus of the woman. Sperm is usually obtained for this procedure through either of the two ways:

i. By inserting the penis inside a special sheath (condom-like) prior to intercourse, or

ii. By masturbation

4.2.2 In-vitro Fertilization (IVF)

The Latin phrase "in vitro" means "in glass" and is used in embryology to contrast with "in utero," which signifies the uterus. When a sperm cell fuses with an ovum, it takes place in the fallopian tubes, which are technically part of a woman's uterus, as part of the regular process of human reproduction. One alternative is in-vitro
fertilization (IVF), which involves transferring the fertilized egg(s) from a donor egg to a test tube rather than a woman's body. The goal of in vitro fertilization (IVF) is to increase the likelihood of fertilization by combining a woman's egg with her husband's sperm in a controlled laboratory setting.

4.2.3 Embryo adoption or artificial embryo nation

The process involves transferring a fertilized egg from one woman to another and placing it in the uterus of one's wife. Assuming a successful embryonic connection, development would continue as planned. The following approach involves embryo adoption.

i. **Artificial Embryonation:** An embryo must be developed and placed in the donor's wife before an artificial insemination procedure using the donor's sperm can take place.

ii. **Adoption of embryo:** In embryo adoption and prenatal adoption, the donor's sperm and eggs are transported to the recipient's womb, where the child is conceived.

iii. **Transfer of an egg into a man's wife's uterus:** A different woman's eggs are used in this process.

4.2.4 Surrogate Parenting

A circumstance known as "surrogate parenting" occurs when a woman has a child for another woman who is unable to conceive due to either a blocked fallopian tube or the absence of a uterus entirely. Womb leasing is another term for it. There were initially two different kinds of surrogacies:

a. **Classical Surrogacy:** The first form of surrogacy involved inseminating a surrogate with a father's sperm, resulting in the surrogate becoming both the genetic and biological mother of the child. This method was widely used before in-vitro fertilization technology was discovered but is now rare.

b. **Gestational Surrogacy:** This is now viewed as the most appropriate and acceptable type of surrogacy. Here, the surrogate is not the genetic mother of the child. This type involves certain processes.
First, the genetic mother is made to undergo in-vitro fertilization to collect eggs. The eggs are collected and fertilized in a laboratory with her partner’s (whether husband or not) sperm. At the time this is going on, the surrogate is having her uterus artificially prepared with hormones. The fertilized egg develops into an embryo, which is usually cultured in the laboratory for 3–5 days. At the end of these days, the ensuing embryo or embryos are then selected and inserted into the prepared uterus of the gestational carrier. At birth, the surrogate transfers the child to the intended parents.

4.3 WHY ARE ASSISTED REPRODUCTIVE TECHNOLOGIES (ARTS) NECESSARY?

The failure of a married couple to conceive or have a child can be an overwhelming experience. Even though this can be caused by infertility, frequent miscarriages/pregnancy losses, or certain diseases/genetic conditions in either or both husband and wife that make pregnancy contraindicated or too risky would lead to the same result. However, attention is generally focused on the infertile couple. Infertility is roughly the result of female factors in 1/3, male factors in 1/3, and combined male and female factors in the remaining 1/3 of the cases. In many cases, the cause is presumptive and cannot be identified (Fadel 2005).

Subsequently, through the examination and conventional treatment of barrenness, many couples will still be unable to have a pregnancy by normal means (coital reproduction). Nowadays, numerous approaches to non-coital reproduction are available to such couples (Fadel 2005). The oldest and best-known of these methods is artificial insemination (AI). AI may have been used in folk medicine for a long time; however, it only became recognized as a form of medical treatment in the last 40–60 years. Initially, AI was practiced using the husband's sperm. When it was thought that the husband's sperm quality was poor (few/immotile sperm), several samples were collected, concentrated, and injected into the wife's uterus under controlled conditions (AIH). Gradually, the concept of donated semen became acceptable.

Reproductive rights, therefore, have generated intense discourse and ignited controversies that really seem to dissect all human endeavors. Muslims, as an integral part of this discourse, have had recourse to Islamic Law to show how it differs from these so-called rights enshrined in the various conventions, especially the use of artificial
methods in human reproduction, as they affect the rights and responsibilities of the resulting child with its parents. Islamic law does not, in principle, disapprove of medical remedies for infertility. Nevertheless, the processes involved in assisted reproductive techniques often breed controversy, not only among scholars or experts in Islamic law but even among the rank and file of any Muslim community. Many questions, mainly about ethical, legal, and psychological issues, have also been raised. Any objection to a process, technique, or procedure of ART must, therefore, not be interpreted as Islam's opposition to technological advancement. Rather, it is an attempt to put every issue discussed in the right perspective and to ensure uncorrupted compliance with the dictates of the Shariah in search for remedies to human predicament (Abdul-Razzaq Abdul-Majeed Alaro 2012).

4.4 THE ISLAMIC VIEW ON THE LEGAL STATUS OF A CHILD BORN THROUGH ASSISTED REPRODUCTIVE TECHNOLOGIES (ARTS)

Islamic law's position on ART is informed by its perception of the cause of the usage itself. Thus, if the cause for using any assisted reproductive technique is to cure the couple's infertility, the act is utterly permissible, provided that no other law of Islam is contravened in so doing. Muslims are allowed and even encouraged to seek lawful cures for any form of illness or disorder they may have. The hadith narrated on the authority of Abu Hurairah ® succinctly put it as follows, "The Prophet said, "There is no disease that Allah has created, except that He also has created its treatment" (Sahih Al-Bukhari, n.d.). According to this hadith, the entire field of medicine is moving in the direction of better disease treatments since it is Allah's will. Another Hadith regarding medical treatment, narrated by Osama bin Sharik, said that I came to the prophet and his companions, who were sitting as if they had birds on their heads. I saluted and sat down. The desert Arabs then came from here and there. They asked the Apostle of Allah if we should make use of medical treatment. He replied to make use of medical treatment, for Allah has not made a disease without appointing a remedy for it, with the exception of one disease, namely old age (Sunan Abu Dawut, n.d.). Additionally, he stated, as narrated by Abu Huraira: "I heard the Apostle of Allah say, 'Black cumin is curative for every ailment except death. ("SAHIH BUKHARI," n.d.)" Treatment of any sickness is the Sunnah of the Holy Prophet, as shown by these
sayings. Infertility is also a sickness, as is well known. This means that people can get the benefits of cutting-edge medical therapies. Maintaining adherence to Islamic Shari’ah law and concept, however, is essential. Therefore, treating infertile couples with test tube fertilization is one option for expanding their family. Apart from surrogacy, all other known Assisted Reproductive Techniques are, in principle, in keeping with the Shariah norms, as they all constitute one form of medical intervention or another to cure a barren woman of her infertility.

According to Shari'ah, the process of fertilization—which entails implanting an egg containing the husband's sperm into the uterus of a different woman—is unacceptable, and many scholars hold the opinion that it is haram. The seventh session of the Islamic Fiqh Academy, organized by the Muslim World League, took place in the sacred city of Makkah from Saturday, 28 Rabiul Akhir 1405 Hijri, to Monday, 7 Jumadal Ula 1405 Hijri, spanning from 19–28 January 1985. Furthermore, an international Islamic conference took place from 11th to 16th, 1986, organized by the Islamic Fiqh Academy Council under the Islamic Conference Organisation's jurisdiction, from the 8th to October 13th of the Islamic calendar year 1407 Hijri. Following an extensive examination, deliberation, and exchange of opinions regarding artificial reproduction or test tube babies, in the presence of knowledgeable doctors and experts, the Ulema Parishad reached the conclusion that there are currently seven methods of artificial reproduction. Out of these, five methods are considered unacceptable, while two methods are considered acceptable.

4.4.1 The Islamic Fiqh Council of the Organization of the Islamic Conference (OIC) has issued a statement

The meeting of the Islamic Fiqh Council was held on 8 – 13 Safar 1407 AH (11–16 October 1986). After examining the subject of artificial fertilization —"test-tube babies" — by studying the research presented and listening to comments of experts and doctors, and after discussion, the Council reached the following conclusions (Muhsin 2013)

a) When fertilization occurs between the sperm taken from the husband and an egg taken from a woman who is not his wife, then the embryo is implanted in his wife's uterus.
b) Where fertilization occurs between the sperm of a man other than the husband and the wife's egg, then the embryo is implanted in the wife's uterus.

c) Where fertilization occurs between the sperm and egg of the couple and the embryo is implanted in the uterus of a woman who volunteers to carry it (surrogate motherhood).

d) Where fertilization occurs outside the womb between the sperm and egg of strangers, then the embryo is implanted in the wife's uterus.

e) Where fertilization occurs outside the womb between the sperm and egg of the couple, then the embryo is implanted in the uterus of the other wife.

f) Where sperm is taken from the husband, and an egg is taken from the wife, and fertilization occurs outside the womb, then the embryo is implanted in the wife's uterus.

g) Where sperm is taken from the husband and placed in the wife's vagina or uterus so that fertilization may take place inside her body.

It was concluded that the first five ways are all haram in accordance with shari'ah and are strictly prohibited either by themselves or due to the outcomes they may produce, which include the mixing of lineages, the loss of motherhood, and other things that are prohibited in accordance with Shariah. After stressing the importance of taking all necessary safeguards, the committee believes that there is nothing wrong with using the sixth and seventh number procedures when necessary, which means following two methods is allowed in Shariah if necessary. -

a) Where sperm is taken from the husband, and an egg is taken from the wife, and fertilization occurs outside the womb, then the embryo is implanted in the wife's uterus.

b) Where sperm is taken from the husband and placed in the wife's vagina or uterus so that fertilization may take place inside her body.

4.4.2 The Muslim World League's Islamic Fiqh Council has released the following statement

The seventh method involves extracting sperm and egg from a couple and fertilizing them in a laboratory. The resulting embryo is then implanted into the womb of another wife of the same man, who willingly volunteers to carry the pregnancy on behalf
of her co-wife, whose womb has been removed. The committee deems this method permissible in cases of necessity, provided it meets the previously mentioned general conditions (Muhsin 2013). The Council resolved to rescind its stance that the third type stated is allowed in the seventh session after discussing the topic and exchanging viewpoints. That being the case, it is morally wrong to fertilize a woman’s eggs with her husband's sperm and then transfer the resulting embryos to another woman who is already married to him.

4.4.3 Majlas-E –Al-Majma-Al-Fiqh –Al-Islami Makkah

The need for a child is a legal object or desire for married women who are unable to be pregnant; because of this, individuals can be helped by utilizing a synthetic way of giving birth. (Qasmi, Moulana Mujahid Islam, 1422)

The Question of ART" was addressed in a fatwa issued by a Saudi Arabian renegade Islamic scholar Muhammad Ibn Saalih al-uthaymeen. He stated that ART should not be practised if the process of procreation can be accomplished through more natural means. In cases where natural means of reproduction are insufficient, assisted reproductive technology (ART) is permissible under three circumstances.

a. "Fertilization requires the husband's sperm. Only the husband's sperm can be used for fertilization.
b. The collection of sperm from the male should be carried out in a permissible manner, such as during sexual intercourse between the husband and his wife, resulting in ejaculation either between her thighs or in her hands, allowing the semen to be released and subsequently fertilizing the egg.
c. The egg should go into the wife's uterus after fertilization. Placing it in the uterus of another woman is never allowed because it involves introducing the man's sperm into a woman who is otherwise forbidden" ("Is IVF (In-Vitro Fertilization) Allowed in Islam? - Islam Question & Answer," n.d.).

The conditions under which Islamic law permits the use of ART: However, there are some parameters that must be met before ART may be considered acceptable. These conditions include the following:

a) There is a genuine necessity for that. A postponement of one or two years in starting a family does not justify the couple's pursuit of this or comparable
approaches. Instead, individuals should exercise patience, as Allah may soon provide them with a solution without requiring them to engage in any forbidden actions.

b) Women should not expose their 'awrah before men while female staff is accessible.

c) The husband is not allowed to masturbate, but he is allowed to have sexual relations with his wife without penetrating her, and this is how sperm is produced.

d) The woman's eggs and the man's sperm should not be frozen for later use or another session, and they should be placed in her uterus immediately. That should be done immediately to avoid mixing or using them for others.

e) The husband must provide sperm, and the wife must provide an egg to implant in the wife's uterus. Anything else is forbidden.

f) The medical professionals who are doing this treatment must be trusted completely.

4.5 RIGHTS OF INHERITANCE OF THE ASSISTED REPRODUCTIVE TECHNOLOGY (ART) CHILD IN ISLAMIC LAW

The legal transfer of control of an estate, whether it be wealth, land, or legal rights or obligations, from a deceased person to their heirs is known as an inheritance(Hussain, A. 2005)". The provisions of rights of inheritance and methods of distribution among the heirs are mentioned by Allah in the verses of the Quran; those verses are 11, 12, and 176 of Surah Al-Nisa. (Uddin 2017)" The term "mirath" is used to describe the law of succession in Islamic law, which includes inheritance. The verb "waratha" is believed to be the origin of this word, meaning to inherit or to assume the responsibilities and rights of one's predecessor in relation to the property and legal obligations. (Coulson, N. J. 1971). Allah said in the Holy Quran, "And it is He, Who created man from water: then from him, He caused two kinds of kindred, by blood and by marriage, your Lord is All-Powerful (The Holy Quran 25:54, n.d.)." According to Islamic inheritance law, there are some circumstances that can render an inheritance invalid. Those cases include murder, illegitimacy, enslavement, and religious disagreements. According to Islamic law, a child born outside of a marriage is considered illegitimate. Here are the main points about the presumption of legitimacy norms in Islamic law:
a. A child born within a period of less than 6 months following marriage is considered illegitimate.

b. The infant is presumed legitimate six months after the date of marriage unless the putative father disclaims paternity.

c. The presumptive legitimacy of a child born within four years of the marriage's dissolution is contingent upon the father disclaiming paternity in the event of separation by divorce.

There must be some kind of foundation for a parent-child connection to be legitimate from a legal standpoint. It all starts with legitimacy. According to the principle of legality, a couple's offspring have the same rights as any other member of the couple's family and are thus entitled to all the protections afforded by law. When it comes to the child's rights and obligations, legitimacy has a significant impact on a variety of factors. A few examples of these are as follows:

a. This concerns a child's right to inherit from his father and receive maintenance.

b. It concerns the father's entitlement to custody, guardianship, and inheritance.

c. Concerning maintenance under circumstances of extraordinary hardship.

Based on the significance of legitimacy in Islam, which was discussed before, one can conclude that the obligations and responsibilities shared between parents and children are contingent upon the legitimacy of the child. This is due to the fact that the methods of assisted reproductive technology (ART), which include in vitro fertilization and surrogacy, hold a significant amount of relevance in this topic, regardless of whether or not they are authorized and sanctioned by Islamic law authorities. The purpose of this work is to review a number of different approaches to artificial insemination, which will be explored in detail. It would be very crucial to bring the opinions of Islamic scholars on each technique based on the legitimacy of the method before beginning the argument on inheritance on each approach.

There is no space for dispute that the notion and idea of IVF and surrogacy had only a history of about 46 years and had not emerged at the time of drafting our canonical writings from the four schools of Islamic jurisprudence. Almost all of the classical literature had been published hundreds of years ago, while the first successful birth of a "test-tube baby", Louise Brown, occurred in 1978, i.e., barely 46 years only. So, it is not prudent to try to find the Islamic regulations about IVF and surrogacy directly from classical texts. However, some of their discoveries and rulings are directly related to the
actions and processes of this human-aided reproductive system and give a partial response to concerns regarding legality and inheritance.

4.5.1 View of the Sunni School

The Sunni School is followed by 90% of Muslims worldwide. Before the year 1985, even surrogacy was permitted among Sunnis for the purpose of getting a kid for a married couple that wanted to have a child. For the reason that the husband and wife's embryo was grown in the uterus of another woman, which indirectly led to the practice of polygamy, the Fiqh Council forbade it. After that, the husband's spermatozoa were only used by the Sunni School AI with permission from both couples. If the couple injects solely each other's gametes into the wife's uterus, IVF is still allowed. All assisted reproduction technologies (ART) are allowed if the husband or wife is the only donor. Despite being illegitimate, children born illegally belong to the mother. Frozen sperm and eggs belong to the married pair and cannot be utilized after divorce or death.

Sunni scholars follow the Quran's pure line of inheritance. Third-party gametes are used to procreate another life. Fertilization outside the marriage is invalid and contributes to infidelity. Islamic law forbids adultery at all times. Using a donor to conceive a child is sinful since Islam forbids forbidden paths. A third person giving birth to a kid ruins the clean line of inheritance and confuses family relationships. According to Islamic law, adultery violates the sanctity of marriage and is thus a sin. Since Mohammedan law prohibits adoption and bases inheritance on holding property from the original parents, the whole idea of inheritance in Islam is called into question when a third party is involved. (Hedayat and Pirzadeh 2001)

4.5.2 View of the Shia School

About 10 per cent of all Muslims belong to the Shia school. In the Shia community, people have different ideas about sperm giving. The leader of Iran at the time, Ayatollah Ali Hussain Khamenei, used the principle of ijtihad to allow sperm donation with some restrictions. The idea of muta marriage backed his view. Many Shia scholars, like Ayatollah Sistani of Iraq, agreed with the Sunni scholars that AI should only use the husband as a provider.
According to Khamenei's statement, he approved of the involvement of a third party in order to have a child; nevertheless, the children can only inherit from their biological father. In the event that this operation produces biological children, the infertile father will be considered an adoptive parent, and the children will take his surname. The Scholar's fatwa differentiates between the biological father and the social parent who emphasizes nurture more than nature. Although the fatwa issued by Khamenei is succinct and straightforward, it has sparked debate among religious scholars concerning a range of sperm donation-related matters. A fatwa states that the solitary donation of sperm does not constitute an adulterous relationship because sexual intercourse is not performed, which is a prerequisite for adultery. However, the majority of scholars in Shia law disapprove of this practice because it remains outside the scope of marriage. This fatwa was notably issued with the intention of encouraging the donation of gametes of both varieties. In the same way, in accordance with religious regulations regarding parenthood, an individual who donates her eggs must ensure that the resulting child inherits from the donor and not the adoptive mother. The Iranian cabinet, in 2003, enacted the Infertile Spouse Act, which legalizes artificial insemination, in response to his fatwa (Rai 2020).

From the above discussion, on the basis of the Quran, hadith, Ijam, and Quyas, and the opinions of the Islamic schools and jurists, it's clear that if the child is born using ART methods, which are permissible under Islamic law mentioned earlier, only ART children will get the rights of inheritance from their biological parents.

4.6 FINDINGS

The following are the significant defects in the legitimacy and rights of inheritance of ART children among the Muslim community:

a) There are a number of issues with artificial human reproduction, both with the practice as a whole and with particular approaches, some of which are compatible with Islamic law and others of which run counter to sharia law.

b) Islamic law acknowledges ART, but only certain aspects of it comply. Certain forms of ART are legal in Islam, while others are banned.

c) Adopting a kid conceived through surrogacy or an unauthorized method of medically assisted conception is prohibited. The offspring conceived through an illicit means is legally attributed to the biological mother who gave birth to them.
The individual in question is regarded as a legit, which means they are deemed to be an illegitimate child.

d) There is no unified as well codified fatwah or direction regarding ART methods among the Muslim Communities of the world.

e) Following ART procedures clearly causes confusion in genealogy (nasab), which goes against one of the main goals of sharia: maintaining lineage (nasal). If this goal of sharia were to be loosened, it would either directly or indirectly allow adulterous relationships and change the rules about the legitimacy of children based on their paternity.

f) Even if the sperm comes from the previous husband, it is not possible to execute medically assisted conception on the ex-wife if the marital contract has been terminated due to the death of the husband or the outcome of a divorce process.

g) There is no unique Shariah board or Council among Islamic states as well as Muslim countries around the globe for giving direction regarding ART children and their rights to inheritance.

4.7 RECOMMENDATION

The following initiatives should be taken to solve the existing problem regarding the legality and rights of inheritance of ART children:

a) The government should make laws to stop the unapproved forms of ART for the Muslim community in harmony with Shariah law.

b) It is also advised to accept fate and avoid defying Allah's infertility to avoid ART's risk. Muslim couples should be brave enough to accept their barrenness without risking dangerous and irreversible ART.

c) People who care about reproductive rights say that the government and social donors should help childless couples pay for the only method of infertility treatment that is legal in Islam.

d) The facility of artificial human reproduction techniques should only be made available to married couples, as opposed to gays and lesbians who are taking advantage of it, despite the fact that marriages between people of the same gender are illegal.
e) The Islamic Ideology Council, like the Muslim World League’s Islamic Fiqh Council, OIC, etc., should clearly state fatwas regarding ART and medical treatment.

f) The Judiciary should make the question of inheritance in the context of Islamic law crystal plain for the child who was born through assisted reproductive technology (ART). The Judiciary should make the question of inheritance in the context of Islamic law crystal plain for the child who was born through assisted reproductive technology (ART).

g) A comprehensive National Artificial Reproductive Technology Act should license Assisted Human Reproductive clinics, accredit them, and regulate the practice. It should be under the state legislative list in the Constitution so each state can make its own laws in compliance with its religious and cultural values.

h) In cases where the problem lies with the wife, Muslim couples who are experiencing infertility have the option of resorting to polygamy. This allows them to avoid the rigour, risk, and waste of income and time that is associated with assisted reproductive technology (ART).

i) It is recommended that in situations where the husband is the one who is experiencing infertility, the wife has the option of either remaining with him or filing for divorce on the basis of the dysfunction that exists within the husband.

j) It is the responsibility of the government to ensure that the Islamic Ideology Council is timely in its issuance of Islamic opinions on a variety of topics, as well as to designate solicitors to investigate those issues in the Shariah court and to draft legislation that is unambiguous.

5 CONCLUSION

This study aimed to examine the legal standing of children born using artificial reproductive technology (ART) in Islamic law, specifically on their inheritance rights. The fact that Islamic law does not fundamentally condemn medical treatments for infertility has been brought to light. However, assisted reproductive treatments are frequently contentious due to the procedures required, which affects Muslims of all ranks and expertise in Islamic law. Additionally, many inquiries have been made, primarily pertaining to matters of ethics, law, and psychology. Since Islam does not
always oppose technological progress, any criticism of an ART process, technique, or procedure should not be taken as such. Instead, it’s an effort to shed light on all matters and guarantee unadulterated adherence to the Shariah’s requirements in the pursuit of human welfare. This study has examined, according to Islamic law, the duties of parents and the rights of children born by artificial reproduction. The scope of the legal obligations that an offspring of assisted reproductive technology (ART) has towards its biological parent under Islamic law has been the subject of our investigation and analysis. This includes, but is not limited to, questions of paternity and maternity, child custody, breastfeeding, maintenance, and inheritance rights.

REFERENCES


Coulson, N. J. 1971. Succession in the Muslim Family,. London,: Cambridge University Press,


Sahih Al-Bukhari. n.d. Vol. Volume 7, Book 71, Number 582:


_The Holy Quran 25:54_. n.d.