

Status and Inheritance Rights of Assisted Reproductive Technology Conceived-Child: An Islamic Law Perspective

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Abstract: This paper discusses the status of children born through assisted reproductive technology (ART) and its implications for inheritance rights from the Islamic Law perspective. For comprehensive and supporting debate, this section explains the types of ART, such as artificial insemination, in vitro fertilization, sperm donors/egg banks, and surrogacy. This paper adopts a doctrinal research method by conducting an in-depth analysis of primary and secondary legal sources. Then, the arguments of Muslim scholars on the topic are analyzed. Results show that legal experts disagree on whether the egg donor or the woman who conceives and gives birth is the biological mother based on the surrogacy regulation for children's rights to inheritance. The author argues that if semen and eggs from a legally married couple are reproduced through ART, the child will be legitimate to the marriage and have full rights to inherit from both parents. However, if a third person is involved either through artificial insemination, surrogate motherhood, or in vitro fertilization, the child is *walad al-zina* (illegitimate child), who cannot inherit from the father but only from the mother and her relatives. This research contributes to the development of contemporary Islamic Law, which faces increasingly complex problems in this technological era.

Keywords: artificial insemination; illegitimacy; inheritance; in vitro fertilization; surrogacy

1. Introduction

The institution of inheritance is as old as the world. It occupies a vintage position in any society, whether such society is primitive, developed, and/or developing. Islam gave humanity an ideal code for human rights 14 centuries ago.¹ These rights confer honor and dignity on humankind and eliminate exploitation, oppression, and

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¹ Khaeron Sirin, "Analysis of a Text and Context Approach within the Formulation of Islamic Inheritance Distributions," *AHKAM: Jurnal Ilmu Syariah* 13, no. 2 (August 7, 2013), <https://doi.org/10.15408/ajis.v13i2.941>.



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injustice. Among these is the right to inheritance.² Because of the status of this institution, no society or legal system can ignore the children's right of inheritance from their parents and vice versa.

Marriages conducted per the rules and teachings of Islamic Law is the only appropriate way of procreation, creating a right to inheritance.³ Therefore, procreation outside a lawful marriage restricts inheritance.⁴ In other words, the procreation between a legally married couple necessitates them to inherit each other in the event that one of them dies because of the blood or matrimonial relationship that exists between them. The rules regulating inheritance in *Shari'ah* are based on the principle that property that belonged to the deceased should devolve on those who, because of consanguinity or marital relations, have the most substantial claim to benefit from it and in proportion to the strength of such claim.⁵ Children's right to inherit the properties of their deceased parents is provided for in *surah An-Nisa*. Thus: "There is a share for men and a share for women from what is left by parents and those nearest related, whether the property be small or large—a legal share."⁶

From the above Quranic provision, the rights of the children, the products of a legally married couple during their marriage, are recognized and guaranteed under Islamic Law. Under this Law, the only recognized means of obtaining children is by bearing or giving birth to them through a licit sexual relationship between the husband and wife during the subsistence of their legal marriage. However, in recent times, with advancing science and technology, the desperate quest for children has developed a new process of procreation, involving reproduction via assisted technology—Assisted Reproductive Technology (ART). This medical procedure is currently being used to address infertility. This involves methods such as *in vitro* fertilization, sperm injection,

² Abdulmajeed B. Hassan-Bello, "Islamic Law of Inheritance," in *Gender and Development in Africa and Its Diaspora* (London: Routledge, 2018), 143–54, <https://doi.org/10.4324/9781351119900-13>; Hanifah Haydar Ali Tajuddin and Salehan Yatim, "Islamic Inheritance Law," in *Islamic Law in Malaysia* (Singapore: Springer Singapore, 2021), 63–73, https://doi.org/10.1007/978-981-33-6187-4_6; Halimah Basri et al., "Inheritance Rights of Women in Makassar Society: A Study of Living Qur'an and Its Implications for Islamic Law," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 6, no. 2 (October 3, 2022): 537, <https://doi.org/10.22373/sjkh.v6i2.13882>.

³ Muttalib Ahmad Ambali, *The Practice of the Muslim Family Law in Nigeria*, 3. (Lagos: Princeton Publ, n.d.), 346.

⁴ Anas Maulana et al., "Inheritance Rights of Nasabiyah Children Born Out of Wedlock According to Islamic Family Law," *El-Usrah: Jurnal Hukum Keluarga* 7, no. 2 (October 10, 2024): 444, <https://doi.org/10.22373/ujhk.v7i2.25072>. Ibn Qudamah and Abd Allah Al-Maqdisi, *Al-Mughnī Fī Fiqh Al-Imām Ahmad Ibn Hanbal Al-Shaybānī* (Beirut, Lebanon: Dār al-Fikr, 1984), 65.

⁵ Abdur Rahman I Doi, *Shari'ah: The Islamic Law* (Ta Ha Publishers, 1984), 272. Abdulmajeed Hassan Bello, "Islamic Law of Inheritance: Ultimate Solution to Social Inequality against Women," *Arab Law Quarterly* 29, no. 3 (August 10, 2015): 261–73, <https://doi.org/10.1163/15730255-12341301>.

⁶ Qur'an, 4:7, see also Qur'an 4:11, 12 and 176.

use of fertile drugs, artificial insemination, sperm donation, and surrogacy.⁷ ART comprises fertility treatments that handle the eggs and sperm of women. This technology has helped many married couples suffering from infertility bear or obtain offspring of their own.

Over the last few years, remarkable scholarship has been drawn toward the interaction between ARTs and Islamic Law, focusing particularly on the status and inheritance rights of children conceived through ART. Serour⁸ outlines Islamic perspectives on different ART methods, emphasizing that ART is acceptable within the framework of marriage meanwhile tackling long-standing ethical issues, particularly those stemming from newly evolved techniques such as surrogacy and posthumous reproduction. Samani et. al.⁹ scrutinized the controversial issue of posthumous reproduction and concluded that Islamic Law prohibits the practice owing to issues related to consent, marital fidelity, and child welfare. Khoei and Ghasemzadeh¹⁰ discussed the doctrine of causality and its effects on inheritance, suggesting that children from third-party ART might claim inheritance against adoptive parents, even if they are not genetically related, assuming that certain frameworks are created. In addition, posthumous reproduction was addressed by Mohseni and Abbasi¹¹, who reported that while Islamic scholars supported the practice within the *idda* period, their fear of the best interests of the child imposed legislation. Diakovych et. al.¹² also assessed inheritance entitlements for people conceived through artificial insemination, highlighting the existing legislative uncertainty and calling for legislative reform to guarantee such individuals' inheritance entitlement. Walusimbi and Abdulrahman focused on the ethics of ARTs within the framework of Islamic Law, recognizing different legislative and ethical

⁷ Mythili Ramalingam, Punukollu Durgadevi, and Tahir Mahmood, "In Vitro Fertilization," *Obstetrics, Gynaecology & Reproductive Medicine* 26, no. 7 (July 2016): 200–209, <https://doi.org/10.1016/j.ogrm.2016.05.006>; Charles L. Bormann, "ART: Laboratory Aspects," in *Clinical Reproductive Medicine and Surgery* (Cham: Springer International Publishing, 2022), 393–408, https://doi.org/10.1007/978-3-030-99596-6_18.

⁸ GI Serour, "Islamic Perspectives in Human Reproduction," *Reproductive BioMedicine Online* 17 (January 2008): 34–38, [https://doi.org/10.1016/S1472-6483\(10\)60328-8](https://doi.org/10.1016/S1472-6483(10)60328-8).

⁹ Reza Omani Samani et al., "Posthumous Assisted Reproduction from Islamic Perspective," *International Journal Fertility & Sterility* 2, no. 2 (2008): 96–100, <https://doi.org/10.22074/ijfs.2008.45718>.

¹⁰ Seyyed Taha Merghati Khoei and Samira Ghasemzadeh, "Concept Development of Causality in Inheritance of Children Born through A.R.Ts with Third Party Intervention," *Health Monitor Journal of the Iranian Institute for Health Sciences Research* 19, no. 1 (February 1, 2020): 63–73, <https://doi.org/10.29252/payesh.19.1.63>.

¹¹ Elaheh Mohseni and Mahmoud Abbasi, "Posthumous Reproduction in Iranian Law," *Reproductive Biomedicine & Society Online* 12 (March 2021): 79–87, <https://doi.org/10.1016/j.rbms.2020.12.002>.

¹² Myroslava Diakovych, Mariya Mykhayliv, and Volodymyr Kossak, "Features of the Inheritance Rights of Children Born as a Result of Artificial Insemination," *Journal of the National Academy of Legal Sciences of Ukraine* 27, no. 4 (December 30, 2020): 214–30, [https://doi.org/10.37635/jnalsu.27\(4\).2020.214-230](https://doi.org/10.37635/jnalsu.27(4).2020.214-230).

consequences based on the validity of the marital union. Sachedina¹³ discusses the ethics linked to ART within Islamic biomedical ethics, highlighting issues related to the preservation of lineage and complex role held by third parties. Furthermore, Moeinifar and Ardebeli¹⁴ discussed issues surrounding lineage and inheritance rights of the cloned child according to Islamic Law and the relationships between the child, genetic donor, and surrogate mother during reproductive cloning. This paper adds to the literature promoting the study of ethics, law, and religion involving ART among Muslim people, specifically regarding issues related to the lineage and inheritance rights for children born through such methods.

This paper critically examines the status and rights of a child born through ART to inherit under Islamic Law, beginning with a discussion on ART, its meaning, and its types. The paper briefly explains the legal meaning and medical procedures of artificial insemination, *in vitro* fertilization, sperm donor/ova bank surrogacy, and artificial embryonation. This will be done using Islamic Law's primary and secondary sources. In addition, the views of jurists from different schools of law will be considered when arriving at a just conclusion. The paper concludes with suggestions and recommendations.

2. Methods

A doctrinal research method was employed, focusing on a systematic and comprehensive analysis of Islamic legal sources. This approach involved a thorough examination of primary legal sources, such as Al-Qur'an verses, hadith, and various scholarly thoughts, including academic commentaries, legal textbooks, and journal articles. By integrating these sources, the research interpreted, clarified, and evaluated the existing legal framework for the study objectives.

3. Results and Discussion

3.1 Types of Assisted Reproductive Technology

ARTs are used via scientifically assisted means of possessing progeny. It is not a conventional or natural way of acquiring children but a form of reproductive rights. Artificial human reproduction means technologically assisted human reproduction, comprising artificial insemination (AI), *in vitro* fertilization (IVF), sperm donation/

¹³ Abdulaziz Sachedina, "Muslim Reproductive Ethics," in *The Oxford Handbook of Religious Perspectives on Reproductive Ethics* (Oxford: Oxford University Press, 2024), 59–82, <https://doi.org/10.1093/oxfordhb/9780190633202.013.6>.

¹⁴ Mohaddeseh Moeinifar and Faezeh Azimzadeh Ardebeli, "Lineage and the Rights of Cloned Child in the Islamic Jurisprudence," *Journal of Reproduction & Infertility* 13, no. 4 (2021): 183–92, <https://doi.org/https://pmc.ncbi.nlm.nih.gov/articles/PMC3719344/>.

overbanking, embryo adoption, egg transfer, surrogate parenting, human cloning, and genetic engineering.¹⁵ Therefore, some of these methods are used as tools for artificial human reproduction based on technology.

3.1.1 Artificial Insemination

According to Black's Law Dictionary, AI is a process for achieving conception in which semen is inserted into a woman's vagina by means other than intercourse.¹⁶ Webster's Ninth New Collegiate Dictionary defines it as "the introduction of semen into the uterus or oviduct by other than natural means."¹⁷ I. A. Aliyu defined it as "a process through which female ova is fertilised with male sperm. Then, the resultant embryo is planted into the uterus of a woman who will carry the pregnancy and deliver the baby."¹⁸

Considerably, AI is a procedure by which sperm is inserted directly into a woman's cervix, fallopian tubes, or uterus, hoping for pregnancy. The most common method is called intrauterine insemination (IUI),¹⁹ in which semen is used to make a woman pregnant without sexual intercourse. The semen to be injected into the woman's uterus can be donated by the recipient's husband or someone other than the woman's husband.²⁰ Sperm is usually obtained for this procedure through either of the two ways: a man masturbates into a sterile glass or plastic cup provided by the doctor or andrology laboratory or inserts the penis inside a special sheath (condom-like) before intercourse.²¹

3.1.2 In Vitro Fertilization

¹⁵ Anthony W. Norman and Helen L. Henry, "Hormones of Pregnancy, Parturition and Lactation," in *Hormones* (London: Elsevier, 2015), 297–320, <https://doi.org/10.1016/B978-0-08-091906-5.00014-8>.

¹⁶ Henry Campbell Black and Bryan A. Garner, *Black's Law Dictionary*, 8. Ed., 2. Repr (St. Paul: Minn: Thomson/West, 2007), 121.

¹⁷ Merriam-webster Staff, *Merriam-Webster's Collegiate Dictionary* (Chicago: Merriam-Webster Incorporated, 2004), 106.

¹⁸ I. A. Aliyu, 'In-Vitro Fertilization and Artificial Insemination Under Islamic Law,' *Ahmadu Bello University Law Journal (A.B.U.L.J.)* 17–18 (1999): 135.

¹⁹ Surveen Ghumman and Parul Aggarwal, "Intrauterine Insemination," in *Atlas of Assisted Reproductive Technologies* (Singapore: Springer Nature Singapore, 2023), 89–100, https://doi.org/10.1007/978-981-99-0020-6_6. Ritvik Vasan, "Novel Design of an Intrauterine Insemination Cannula," *International Journal of Infertility & Fetal Medicine* 6, no. 1 (April 2015): 15–19, <https://doi.org/10.5005/jp-journals-10016-1095>.

²⁰ Ram Kasimanickam, "Artificial Insemination," in *Bovine Reproduction* (Wiley, 2014), 295–303, <https://doi.org/10.1002/9781118833971.ch32>.

²¹ M. J. Tomlinson et al., "Brief Communication: Assessment and Validation of Nonspermicidal Condoms as Specimen Collection Sheaths for Semen Analysis and Assisted Conception," *Human Fertility* 15, no. 3 (September 9, 2012): 140–43, <https://doi.org/10.3109/14647273.2012.718100>. Reproductive Facts, 2022, <https://www.reproductivefacts.org>.

In vitro is a Latin phrase that means “in glass” in embryology. It is used in contrast to *in utero*, which means in the uterus. Under normal circumstances, human procreation involves the fertilization of a sperm and an egg, which takes place in a woman’s uterus, in the fallopian tubes, when a sperm cell unites with an ovum. In contrast, IVF is fertilization performed artificially outside the woman’s body, i.e., in a test tube. IVF is a laboratory procedure in which sperm are placed with an unfertilized egg in a Petri dish for fertilization;²² additionally, an egg is fertilized outside a woman’s body and inserted into the woman’s womb for gestation.²³

Considerably, IVF can be explained as a form of ART involving the fertilization of a sperm and an egg in a laboratory to produce an embryo that ultimately results in a test tube baby. It treats infertility and serves as an avenue for lesbians and single mothers to have babies.²⁴

3.1.3 Sperm Donor/Ova Bank

In some cases, the husband may not produce any sperm at all (a condition called azoospermia), be suffering from a neurological condition that makes ejaculation impossible, or be suffering from certain diseases such as diabetes, rendering him impotent. Additionally, he may carry a dominant gene for a genetic disorder. Even in the presence of any of these conditions, it is still possible for a man to inseminate his wife with a donor’s sperm. This explains the existence of sperm banks in some advanced countries.²⁵ An ova bank, cryobank, or egg cell bank collects and stores human ova, mainly from ova donors, primarily to achieve pregnancies of either the donor at a later time (to overcome infertility issues) or through a third-party reproduction, AI. Such ova tissue donated is known as donor ova.²⁶

Scientifically, the term pregnancy is only used when a sperm fertilizes an ovum. The resulting fetus or child is a product of the union of the man and woman whose sperm and ovum are coupled and fertilized. The husband either produces no sperm

²²Yinzhong Bing and Rodney J. Ouellette, “Fertilization In Vitro,” 2009, 251–66, https://doi.org/10.1007/978-1-60327-009-0_16. S Bhargavi et al., “In Vitro Fertilization: Facts in Medical Sciences,” *Asian Pacific Journal of Reproduction* 7, no. 4 (2018): 145, <https://doi.org/10.4103/2305-0500.237050>. MedTerms, ‘Online Medical Dictionary,’ 2022, <https://www.medterms.com/script/main/art.asp?articlekey=7222>.

²³ *Webster’s Universal Dictionary & Thesaurus* (Glasgow: Geddes & Grosset, 2003), 1263; Black and Garner, *Black’s Law Dictionary*, 1582–83.

²⁴ F A R Adeleke, “Examining the Legal Status of Embryo Used in Reproductive Technology (IVF and ES) in Some Selected Jurisdictions,” *Journal of Islamic and Comparative Law (UDUSJICL)* 1 (2010): 83.

²⁵ Abul Faḍl Moḥsin Ebrāhīm, *Abortion, Birth Control and Surrogate Parenting: An Islamic Perspective* (Kuala Lumpur: American Trust Publications, 2005), 34.

²⁶ Patricia L. Sachs and Linda Hammer Burns, “Recipient Counseling for Oocyte Donation,” in *Infertility Counseling* (Cambridge University Press, 2001), 319–38, <https://doi.org/10.1017/CBO9780511547263.020>.

or, in some instances, unviable sperm. Moreover, the woman produces no eggs but has all the features required to carry a pregnancy to maturity. Therefore, the whole process can occur another way, with woman donating her eggs (ovum).²⁷

3.1.4 Artificial Embryonation/Embryo Adoption

Embryo adoption allows the family with remaining embryos to choose a recipient family for the embryo gift. The adopting family can utilize the donated embryos for pregnancy and give birth to their adopted child.²⁸ In this method, an already fertilized egg is transferred. If attachment to the uterine wall is successful, embryo development will occur in a typical fashion.²⁹

Artificial embryonation requires fleshing an embryo from a woman whose donor's sperm has been artificially inseminated, followed by implanting the embryo in the womb of the donor's wife. While embryo adoption, or parental adoption, involves the donor sperm and egg, they are transferred to the recipient's womb, where the fetus is brought to birth. In egg transfer, the egg of another woman is transferred into the uterus of a man's wife.³⁰

The abovementioned techniques are opted if one's wife cannot ovulate or perhaps has no fallopian tubes. These techniques may also result in abnormality, such as blockage and damage of the fallopian tubes.

3.1.5 Surrogacy

Surrogacy is another form of ART. According to Black's Law Dictionary, "surrogacy is the act of performing some functions in the place of someone else."³¹ Webster's New Collegiate Dictionary defines a surrogate as "one appointed to act in the place of another."³² Black's Law Dictionary defines a surrogate mother as "a woman who carries out the gestational function and gives birth to a child for another, especially a woman who agrees to provide her uterus to carry an embryo throughout pregnancy, typically on behalf of an infertile couple, and who relinquishes any parental rights she may have upon the birth of the child. A surrogate mother may or may not be the genetic mother of a child."³³

²⁷ Ebrāhīm, *Abortion, Birth Control and Surrogate Parenting: An Islamic Perspective*, 34.

²⁸ Nightlight, "Embryo Adoption Information," 2022, <https://nightlight.org/embryo-adop>.

²⁹ Ebrāhīm, *Abortion, Birth Control and Surrogate Parenting: An Islamic Perspective*, 34.

³⁰ Ebrāhīm, 34.

³¹ Black and Garner, *Black's Law Dictionary*, 1485.

³² Merriam-Webster, Inc, *Webster's Ninth New Collegiate Dictionary*, 1188.

³³ Black and Garner, *Black's Law Dictionary*, 1036.

Considering the abovementioned definitions, surrogating parenting exists when a woman bears a child for another woman who cannot bear children because of either a blocked fallopian tube or absence of a uterus. There are two types of surrogacy: partial and complete. In partial surrogacy, a couple commissions a woman to be artificially impregnated by the husband's semen. The surrogate then carries the pregnancy to term and, upon birth, hands the baby over to the soliciting couple. In this case, the child has a rearing father, a rearing mother, and a biological birth mother. In complete surrogacy, the commissioning couple undergoes IVF and the produced embryo is transferred to a surrogate woman. The surrogate gives the baby to the soliciting or rearing couple at birth. In this case, the biological parents are the rearing couple, and the surrogate is the birth mother. In this type, the genetic mother undergoes IVF for egg collection. The eggs collected will be fertilized in a laboratory with her partner's (whether husband or not) sperm. The fertilized egg develops into an embryo. The selected embryo will be inserted into the prepared uterus of the gestational carrier. At birth, the surrogate hands the child to the couple.

3.2 Conditions for Succession under Islamic Law

Three conditions of inheritance must be fulfilled before a valid right of inheritance can be established under Islamic Law. No succession in law can exist without one of the following conditions or elements³⁴: first, there must be a deceased person; there will never be a valid right of inheritance without the person being deceased³⁵³⁶; the property of a Muslim should not be subjected to inheritance unless his death is confirmed or a competent court declares him missing (*Mafqood*).³⁷ Second, even when there is a deceased person, there must be properties capable of being inherited. Therefore, succession without the deceased and the estate is not possible.³⁸ Third, the heir who will inherit the property left should survive (*Warithun*). These are those to whom the property of a deceased person is transferred. They are beneficiaries of the estate.³⁹

³⁴ Abu 'Amr 'Uthman ibn 'Abd al-Rahman ibn al-Shalah Al-Syahrastwari, *'Ulum Al-Hadith Li Ibn Al-Shalah* (Damaskus: Dar al-Fikr, 1986), 1.

³⁵ Uthman Danladi Keffi, *Some Aspects of Islamic Law of Succession* (Kano: Centre for Islamic Legal Studies, Institute of Administration, Ahmadu Bello University, Kongo Campus, 1990).

³⁶ Keffi, *Some Aspects of Islamic Law of Succession*.

³⁷ Ambali, *The Practice of the Muslim Family Law in Nigeria*, 342; Doi, *Shari'ah*, 273.

³⁸ Keffi, *Some Aspects of Islamic Law of Succession*, 1.

³⁹ Keffi, 10.

It is trite in *Jatau v. Mailafia*,⁴⁰ under Islamic Law, the door of inheritance only opens upon the fulfillment of three fundamental conditions: proof of the death of the praepositus, proof of the survival of an heir, and evidence that the praepositus leaves behind an inheritable estate.⁴¹ *Warithun* must be proved at the time of the deceased's death (*Maoruth*), even if by breathing for a few seconds.⁴² These beneficiaries are categorized into heirs by blood, marriage, clientage, and the Muslim Public Treasury; they are sometimes designated as remarkable heirs.⁴³ These four relationship categories will be discussed or examined under succession grounds.

3.3 Grounds for Succession

To determine whether a child born through ART can inherit from biological or legal parents under Islamic Law, recourse should be available to the grounds of succession known in Islamic terminology as *Asbabul Mirath*.⁴⁴ These are the legal grounds on which a prospective heir can be legally justified to benefit from the hereditaments on the deceased's death.⁴⁵ If an heir inherits as a widow or widower, s/he inherits on the grounds of marriage. If heir is a child, parent, uncle, aunt, or any member of the outer family, s/he inherits as a blood relative, in which case the blood relationship is the ground.⁴⁶ In other words, a special relationship between the deceased and legal heirs must exist, qualifying and entitling the heir to inherit the deceased. The special relationship may be related to blood, matrimony, or clientage.⁴⁷ Subsequently, these grounds for succession are briefly discussed.

⁴⁰ (1998) 1 NWLR (Pt 535) 176 CA.

⁴¹ Refer to the cases of *Ahmed v. Jibrin* (1982) 1 Sh. LRN 69; *Maiwarwaro v. Gara* (2001) 7 NWLR (Pt. 711) 40; *Muhammadu v. Muhammadu* (2001) 6 NWLR (Pt. 708) 104 CA and *Jiddan v. Abuna* (2000) All FWLR (24) 1402 CA.

⁴² Gestures such as crying, breathing, kicking, coughing, seeing, urinating, and yawning are individually and collectively material in this regard, particularly concerning Al-Hadith of the Holy Prophet Muhammad narrated by Abu Hurayrah, where the Holy Prophet was quoted to have emphasized that "if a new born baby cries, it can inherit." Yusuf Abdulrasheed and Sheriff E Okoh, "Legal Challenges of In-Vitro Fertilisation (IVF) Under English and Islamic Law," *Unilorin Shari'ah Journal* 3, no. 1 (n.d.): 76. Eric Sills and Sarah Murphy, "Determining the Status of Non-Transferred Embryos in Ireland: A Conspectus of Case Law and Implications for Clinical IVF Practice," *Philosophy, Ethics, and Humanities in Medicine* 4, no. 1 (2009): 8, <https://doi.org/10.1186/1747-5341-4-8>.

⁴³ Keffi, *Some Aspects of Islamic Law of Succession*, 10.

⁴⁴ Keffi, 19.

⁴⁵ Keffi, *Some Aspects of Islamic Law of Succession*.

⁴⁶ Keffi.

⁴⁷ Keffi, 1.

3.4 Marriage: *An-Nikah*

Marriage is a fundamental foundation qualifying the surviving spouse to inherit the deceased spouse.⁴⁸ However, for a marriage to create a right of intestate succession between spouses in a Muslim family, it must be valid and must exist during the death of the spouse.⁴⁹ A marriage is valid when it conforms with all the requirements of validity, such as a marriage guardian⁵⁰ (*wali*), witnesses⁵¹ (*shuhud*), dowry⁵² (*sadaq* or *Mahr* or *Nihlah*), and the⁵³ declaration or offer and acceptance (*seegah*), and that none of the spouses shall fall within a prohibited degree of marriage.⁵⁴ Noncompliance of the marriage with one or more of these requirements may, in some cases, render it void (*batil*) or irregular (*fasid*), depending on how adversely the marriage is legally affected.⁵⁵ Elementally, a valid marriage contract includes the right to inherit from each other. The Qur'an has established this right:

⁴⁸ Ambali, *The Practice of the Muslim Family Law in Nigeria*, 346.

⁴⁹ Keffi, *Some Aspects of Islamic Law of Succession*, 19.

⁵⁰ Marriage guardianship is the legal authority invested in a person who is completely qualified and competent to safeguard the interest and rights of another incapable of doing so independently. It is the authority of a father or nearest male relative over minors, insane, or inexperienced persons, who need protection and guardianship. Hammudah Abd al' Ati, *The Family Structure in Islam* (Lagos: Islamic Publications Bureau, 1970), 70. A guardian (*waliy*) should be a Mukallaf, i.e., a person who is responsible for all the deeds by virtue of his/her age and state of mind. Ambali, *The Practice of the Muslim Family Law in Nigeria*, 190; The Qur'an provides the authority of the Waliy when it says, "Wed/Marry them with the leave of their owners," (Qur'an 4:20). The Prophet reportedly said: "And there is no marriage except with the permission of guardian and payment of dowry and two reliable witnesses." Doi, *Shari'ah*, 161; Aminu Muhammad Gurin, *An Introduction to Islamic Family Law*, 2. (Lagos: Malthouse Law Books, 2014), 61–80.

⁵¹ There must be two competent witnesses to witness the offer and acceptance between the contracting parties and their guardians so that the progeny's right of legitimacy will be safe. al'Ati, *The Family Structure in Islam*, 60; The Qur'an testifies to this in Surah Al-Baqarah, Chapter 2: 228 thus: And get two witnesses out of your own men. And if there are not two men (available), then, a man and two women, such as you agree for witnesses...Qur'an 2:282. The Prophet said, "and there is no marriage except with the permission of guardian and payment of dower and two reliable witnesses. Gurin, *An Introduction to Islamic Family Law*, 42–44.

⁵² Dowry (*Mahr*) is a gift from the bridegroom to his bride and becomes her exclusive property. Islam has elevated the status of women as *Mahr* is given as a mark of respect for her. Doi, *Shari'ah*, 158 Allah says in Surah an-Nissah: "And give the women (on marriage) their dower as a free gift but, if they, of their own good pleasure, remit any part of it to you, take it and enjoy it with right good cheer." Qur'an 4:4. He said again, "Wed/Marry them with the leave of their owners and give them their dowers according to what is reasonable." Qur'an 4:20. See also Qur'an 33:50.

⁵³ *Seegah* refers to the expression of marriage offer by the Waliy of marriage and its acceptance by the prospective husband. Ambali, *The Practice of the Muslim Family Law in Nigeria*, 208; There must be a direct, unequivocal proposal followed by a corresponding acceptance thereof. Proposal and acceptance must be explicit and oral if the contracting parties are present in person. Otherwise, a written form may substitute for the oral. al'Ati, *The Family Structure in Islam*, 60; Gurin, *An Introduction to Islamic Family Law*, 33.

⁵⁴ See Qur'an 4, 22 and 23.

⁵⁵ Keffi, *Some Aspects of Islamic Law of Succession*, 19.

In what your wives leave, your share is a half if they have no child; but, if they leave a child, you get a fourth of that which they leave after payment of legacies that may have been bequeathed or debts. In that which you leave, their (your wives) share is a fourth if you leave no child, but if you leave a child, they get an eighth of that which you leave.⁵⁶

Therefore, either of the spouses is a legal heir to the other until their marriage subsists till one of them dies. The right of the surviving spouse to inherit their late partner remains in force if they separate in a way that they can be recalled and one of them dies before the expiration of the stipulated waiting period called *Iddah*. This principle of law applies when the two parties are in good health during *talaq* (dissolution of marriage). However, if *talaq* is pronounced when the husband is sick and sickness eventually leads to death, the surviving partner is qualified to inheritance even if s/he has remarried.⁵⁷

3.5 Blood Relationship (*Nasab*)

Another source of inheritance is blood relationships. When a heir inherits either as a child, parent, collateral, uncle, or any member of the outer family, s/he is said to be inherited as a blood relative, where the blood relationship is the ground.⁵⁸ Thus, the right of inheritance through a blood relationship exists between a father and sons/daughters, a son's son/daughter, a grandfather, a brother/sister, consanguine, a uterine brother, a consanguine sister, a uterine sister, and a mother, among others.⁵⁹ In other words, it is a kind of blood relationship between the relatives of the deceased. According to Coulson, the family group knitted together by social rights and obligations was the extended aquatic family of males linked through a common ancestor. Although maternal relatives have rights of inheritance, the main emphasis lies on the paternal connection and the primary relevance of blood relationship (*nasab*) regarding paternity.⁶⁰ Blood relations are the descendants and ascendants of the deceased person, including the offsprings, parents, brothers, and uncles.

⁵⁶ Qur'an 4:12.

⁵⁷ Ambali, *The Practice of the Muslim Family Law in Nigeria*, 346.

⁵⁸ Keffi, *Some Aspects of Islamic Law of Succession*, 19.

⁵⁹ Ambali, *The Practice of the Muslim Family Law in Nigeria*, 346.

⁶⁰ N. J. Coulson, *Succession in the Muslim Family*, 1st Ed (London: Cambridge University Press, 1971), 10, <https://doi.org/10.1017/CBO9780511557965>.

Chapter 4, verse 7 of the Qur'an gives an insight into this: "There is a share for men and a share for women from what is left by parents and those nearest related whether the property be small or large – a large share."⁶¹

3.6 Guardianship (*Wila or Al-Walaa'*)

Al-Walaa' is one of the foundations of inheritance. This is a slave–master relationship, in which the deceased is a slave of the heir, but the latter sets him free, and the former dies without surviving by an heir. A person who sets a slave free is entitled to inherit all his estates under *Ta'sab* if their other heir(s) do not survive.⁶² The Prophet said, "A person who sets a slave free is entitled to his inheritance."⁶³ The import of this hadith is that the master or his child is eligible or entitled to inherit his freed slave if an heir or relation does not survive the latter. However, if the shares of other heirs are given, the master takes the balance.⁶⁴ For example, he survived by only one wife, one daughter, and two daughters, who are given a maximum of $\frac{1}{4}$, $\frac{1}{2}$, and $\frac{2}{3}$ of the estate, respectively; the balance of $\frac{3}{4}$, $\frac{1}{2}$, and $\frac{1}{3}$ will belong to the master in his capacity as *Asib*, agnate.⁶⁵ However, the master will not inherit anything from his freed slave if the latter is survived by other heirs, such as a son and a wife, who exhaust the whole estate.⁶⁶ Muslim jurists unanimously hold that the right is not reciprocal. A freed slave cannot inherit his master even if he dies without his heirs.⁶⁷

It is trite under Islamic Law that to qualify as anyone's descendant, the person claiming such a relationship must be related to the other by blood⁶⁸ because the relationship by adoption is impermissible.⁶⁹ In *Hamza v. Yusuf's*⁷⁰ case, the Court of Appeal held that "*Shari'ah* requires that a party claiming to inherit a deceased person has to establish to the court that he is related to the deceased person either by

⁶¹ Qur'an 4:7, see generally Qur'an 4:11, 4:12 and 4:176.

⁶² Ambali, *The Practice of the Muslim Family Law in Nigeria*, 345; Keffi, *Some Aspects of Islamic Law of Succession*, 41.

⁶³ Mas'ud Adebayo Oniye, *The Distribution of Estate in Islam (The Law and Practice)* (Ilorin: Centre for Arabic Manuscript Publication, n.d.), 7.

⁶⁴ Ambali, *The Practice of the Muslim Family Law in Nigeria*, 345.

⁶⁵ Ambali, 345.

⁶⁶ Ambali, 345.

⁶⁷ Ambali, 345.

⁶⁸ Known in Arabic as *Nasab* or *Qarabah*; see the cases of *Garba v. Abdul* (2002) FWLR (94) 185 CA; *Karimatu v. Idi* (2006) 25 WRN 129 CA; *Hamza v. Yusuf* (2007) 46 WRN 137.

⁶⁹ Abdulrasheed and Okoh, "Legal Challenges of In-Vitro Fertilisation (IVF) Under English and Islamic Law," 57.

⁷⁰ (2007) 4 WRN 137/

blood – *Nasab/Qaraba*; marriage – *Nikkah/Zawaj* or emancipation – *Itaq/Walaa*.” These are known in Islamic terminology as *Asbabul Mirath*, which refers to the grounds of succession.”

3.7 Public/Muslim Treasury (*Baitul Mal*)

The schools of Imam Malik and Shafi'i considered *baitul mal* (Muslim/Public treasury) as an institution that can inherit the estate of a Muslim in certain circumstances; this can only be a ground where a Muslim dies and lacks any person entitled to inherit. Next, their whole estate goes to the public/Muslim treasury for benefiting the Muslim *Ummah*.⁷¹ Another situation is where certain heirs survive the late Muslim, but none of them belong to the *Al-'Asib* residuary; the balance goes to the public treasury after giving the heirs their respective dues.⁷²

3.8 Status and Rights of Children Born Through Assisted Reproductive Technology in Islamic Law

The science of *Mirath*—inheritance in *Shari'ah*—establishes guide who inherits, who is to be inherited, and what shares will go to the heirs. A death transfers most rights and obligations to people who survive, known as *wuratha*—heirs and representatives.⁷³ However, the deceased may nominate multiple people related or connected with them, making it difficult to determine whose claim supersedes that of the others.⁷⁴ The elaborate provisions under Islamic Law state that relations are entitled to inherit, and the shares have been categorically specified in the Glorious Qur'an.⁷⁵

Given the relevant Qur'anic provisions,⁷⁶ a child can inherit from their parents, especially those born of lawful wedlock. However, whether the word child covers and includes a child born through ART and whether the interpretation of these Qur'anic provisions relating to inheritance permits such a designer baby or child to inherit from their supposed parents is questionable and law that will be critically examined.

3.8.1 Status and Rights of a Child Born Through Surrogacy

⁷¹ Ambali, *The Practice of the Muslim Family Law in Nigeria*, 347.

⁷² Ambali, 347.

⁷³ Doi, *Shari'ah*, 271–72.

⁷⁴ Doi, 272.

⁷⁵ See Qur'an 4:11, 12 and 176.

⁷⁶ Qur'an 4:11, 12 and 176.

ARTs have introduced many new challenges to the inherited structure of Islamic lineage regulations. Notably, surrogacy arrangements defy the classical definition of paternity and maternity. Surrogate parenting involves a woman bearing the child of another woman who cannot bear children because of blockage of fallopian tube or absence of a uterus. Surrogacy is sometimes called “womb leasing.”⁷⁷ Notably, all forms of surrogacy are forbidden in Islam because the contract is unlawful. In Islamic Law, a contract of whatever nature must be lawful in its essence, content, and nature. It must involve things recognized as legal and of value by Islamic Law.⁷⁸ Nevertheless, it is not lawful to fertilize the sperm and ova of the spouses and plant them in another woman’s uterus, which will deliver the resultant embryo to the spouses. Additionally, obtaining another man’s sperm or another woman’s ova and getting it fertilized with the wife’s ova or husband’s sperm, as the case may be, and then planting the resultant embryo in the woman’s uterus, who will now deliver a baby for them is forbidden.⁷⁹

In partial or classical surrogacy, a couple commissions a woman for AI by the husband’s or the father-to-be’s semen. Next, the surrogate carries the pregnancy to term and, upon birth, hands the baby over to the soliciting couple. In this situation, the surrogate automatically becomes the child’s genetic and biological mother by contributing the genetic egg, carrying the pregnancy, and delivering the baby. In this case, the child will have a rearing father, rearing mother, and biological mother.⁸⁰

However, in complete or gestational surrogacy, the surrogate is not the genetic mother because the egg is not collected. The fertilized egg is developed into an embryo by IVF and transferred to a surrogate woman who carries the pregnancy. The surrogate gives the baby to the soliciting or rearing couple at birth. In this case, the biological parents are the rearing couple, and the surrogate is the birth mother.

Our primary concern here is not to examine the legality of the surrogacy arrangement, but to investigate the status of a child born through the process and whether such a child has a right to inherit the supposed parents under Islamic Law. Surrogacy arrangements have created new maternity claims subject to the role of the

⁷⁷ Ebrāhīm, *Abortion, Birth Control and Surrogate Parenting: An Islamic Perspective*, 112.

⁷⁸ Yahaya Yunusa Bambale, *Islamic Law of Commercial and Industrial Transactions* (Lagos: Malthouse Press Limited, 2007), 36; Mansur Ibrahim Sa’id and Kabiru G Muhammad, *An Introduction to Islamic Law of Contract* (Sokoto: Usman Danfodiyo University Press Limited, 2019), 37.

⁷⁹ I A Aliyu, “In-Vitro Fertilization and Artificial Insemination Under Islamic Law,” *Ahmadu Bello University Law Journal (A.B.U.L.J)* 17–18 (2000): 135–43.

⁸⁰ Available at <https://www.ncbi.nlm.nih.gov/books> accessed on 22nd January, 2022 at 5.50 p.m.

surrogate mother and her contribution, whether gestational or genetic. These latest developments in the family law pose new questions and challenges that legal systems are trying to cope with these important changes.⁸¹

Based on these legal opinions, three main issues have often been raised concerning surrogacy: the criteria for defining the maternity relationship; how can this new type of maternity be integrated; and how can this procedure be regulated under Islamic Law. Regarding the first question, scholars disagreed on whether maternity should be defined primarily based on genetic structure, in which case the contributor of the ovum should be the mother.⁸²

Arguably, the genetic mother (whether the wife or surrogate) whose ovum is fertilized with the husband's sperm is a real mother as she provides the ovum. However, maternity should be defined in terms of the relationship between pregnancy and childbirth. Linguistically, the Arabic word for "to give birth" is *Walada*, and for "mother," or the "one who gives birth" is *Walidah*. Arguably, the woman who delivers the baby is the birth mother, especially in Qur'anic provision, which refers to them as their real mother. In *Surah Al-Mijadalah*, the Qur'an says, "None can be their mothers except those who gave birth to them." Qur'an 58:2.

Concerning the second question, some scholars have proposed an analogy between the gestational and breasting mothers.⁸³ Although this analogy is invoked frequently, critics have found notable differences between these two relationships.

The third question is not restricted to determining whether surrogacy is permitted under Islamic Law, but has to do with regulating actual cases if the procedure is implemented, regardless of whether it is allowed. Therefore, under the Islamic Law (even with the surrogacy arrangement, which is forbidden), the child is only related to the paternity and maternity involved in surrogacy. The child will inherit from the birth mother (Qur'an 58:2). Notably, Islamic Law prohibits surrogacy; however, if the practice is still conducted, it is the consensus of Islamic scholars that the birth mother is the "real" mother. Such a child has a legal right to inherit from such a mother.⁸⁴

⁸¹ Arjun Appadurai, *Modernity at Large: Cultural Dimensions of Globalization, Public Worlds*, vol. v. 1 (Minneapolis, Minn: University of Minnesota Press, 1996).

⁸² Appadurai.

⁸³ Zeljka Buturovic, "Formula Feeding Can Help Illuminate Long - term Consequences of Full Ectogenesis," *Bioethics* 34, no. 4 (May 30, 2020): 331–37, <https://doi.org/10.1111/bioe.12687>. Al-Mirath fi al-Shari'at al-Islamiyyah of al-Ustadh' Ali-Hasb Allah, 2nd ed. 94, Ibn 'Abidun, and Ibn Qudamah in al-Mughni, Chapter on Inheritance, fasi al-'asabat (male relatives).

⁸⁴ Available at <https://www.ncbi.nlm.nih.gov/books>, accessed on 22nd January, 2022 at 5.50 p.m.

Surrogacy is prohibited in Islamic Law because of the involvement of a third party, neutral to the marriage contract. However, surrogacy between wives of the same husband is allowed by Ali Khamenei of Iran.⁸⁵ What, then, is the child's status in relation to his right to inheritance? Some scholars such as Arif Ali Arif allow such a method between wives of the same husband. In contrast, scholars including Badrul Muthawalli Abdul Basith consider the woman with the uterus to be the birth mother in all cases of surrogacy, and her husband would be the father of that child even if the sperm was not his, as long as the woman marries him. This is in the light of the Hadith of the Prophet, which says "the child belongs to one on whose bed it is born."⁸⁶ If he does not marry, then the child is hers, and he will be in the position of a child of prostitution who will inherit only his mother.⁸⁷

Yusuf Qardawi also believes that the mother of the child will be the birth mother, the father will be her husband, and the mother of the egg will be a breastfeeding mother.⁸⁸ In this case, the child has the right to inherit according to the Islamic Law, i.e., the child will inherit the woman who gave birth to him and the father, who is the husband and owner of the sperm. The rules of distribution are outside this work's scope.

3.8.2 Status and Rights of a Child Born Through an Artificial Insemination Process

The phrase AI has been defined elsewhere in this work as the process of placing sperm inside the woman's vagina or uterus by means other than sexual intercourse. The sperm may be the woman's husband or a third-party donor. It is also a method by which a female is impregnated through the injection of semen from a donor, who may be the husband or the third party, other than through sexual intercourse.⁸⁹ Reportedly, AI is, in the *Shari'ah*, a grievous and sinful crime and is tantamount to adultery.

AI is not *haram* (prohibited) under Islamic Law so long as the sperm used to inject the woman is her husband's; in this case, the child is legal and has the right to

⁸⁵ Ruaim A. Muaygil, "Reexamining the Prohibition of Gestational Surrogacy in Sunni Islam," *Developing World Bioethics* 17, no. 2 (August 20, 2017): 112–20, <https://doi.org/10.1111/dewb.12133>. Ayman Shabana, "Foundations of the Consensus against Surrogacy Arrangements in Islamic Law," *Islamic Law and Society* 22, no. 1–2 (2015): 82–113, <https://doi.org/10.1163/15685195-0>.

⁸⁶ Doi, *Shari'ah*, 188.

⁸⁷ Sayyid Mohammed Mushin, "'Children by IVF and Surrogacy: A Juristic Study on Their Laws of Inheritance,'" *The Muslim World League Journal* 42, no. 5 & 6 (2013): 33.

⁸⁸ Mushin, 31.

⁸⁹ Black and Garner, *Black's Law Dictionary*, 121.

inherit from the parents per Islamic Law.⁹⁰ Yusuf Al-Qardawi thus offered an insight into this: Islam safeguards lineage by prohibiting *zina* (adultery and fornication) and legal adoption. Thus keeping the family line unambiguously defined without any foreign element entering it. It likewise prohibits what is known as AI if the donor sperm is other than the husband.⁹¹

When a child is born from AI, using the sperm of a man other than the husband, will he be legitimate, and to whom will he be attributed? Regarding the sterile husband, the child cannot be attributed to him under any circumstances.⁹² Although the author did not provide a reason for this conclusion, the sterile husband may be infertile and unable to impregnate a woman. Nonetheless, such a child cannot still be attributed to the third person whose sperm was used to impregnate the surrogate mother. This child, in our view, is nothing but illegitimate. Illegitimate children are born as a result of prohibited sexual intercourse between nonintimate men and women.⁹³ Although AI does not involve the physical intimacy, or presumably the desire to engage in an extramarital affair, it is nonetheless considered a form of adultery by most Muslim scholars.⁹⁴

Under *Shari'ah*, the biological relationship between *walad al-zina* and his supposed father would be automatically severed.⁹⁵ Arguably, Islam does not impose the duty of fathering a child on a man who impregnated the child's mother even if the man acknowledged the pregnancy.⁹⁶ The legal support for this position is the hadith of the Prophet, which says, "If a man commits fornication with a free woman or a slave woman, the child is the product of fornication he neither inherits nor may anyone inherit from him."⁹⁷ Therefore, a child born from AI between the mother and a

⁹⁰ Ebrāhīm, *Abortion, Birth Control and Surrogate Parenting*, 115.

⁹¹ Al-Trans American Trust Publishers, Indiana Polis (nd)

⁹² Ebrāhīm, *Abortion, Birth Control and Surrogate Parenting*, 112.

⁹³ Mohamad Hadi Mahdavi Ardakani and Arezo Rashidi, "Status of Guardianship, Alimony and Inheritance of Illegitimate Children in Islam," *World Scientific News* 44 (n.d.), <http://agro.icm.edu.pl/agro/element/bwmeta1.element.agro-af19b121-f6f4-44c8-b959-5fff836334ce>.

⁹⁴ Raja Gopal and Meerah Deiwi, "Does Illegitimacy Status of Children Matter? A Review on Malaysian Perspectives," *International Journal of Applied Psychology* 5, no. 4 (2014): 109–14, <http://article.sapub.org/10.5923.j.ijap.20150504.05.html>.

⁹⁵ Gopal and Deiwi, 110.

⁹⁶ Imam Tamim, Muhammad Kamaldeen, and Wardah Itannaola Abbas, "Exploratory Study of Rights of Illegitimate Child Under the Shari'ah and International Child Rights Instruments," *Unilorin Shari'ah Journal* 3, no. 1 (2016): 102.

⁹⁷ Tamim, Kamaldeen, and Abbas, "Exploratory Study of Rights of Illegitimate Child Under the Shari'ah and International Child Rights Instruments."

third party is *walad al-zina* and will not be entitled to inherit from such a supposed father.

As for the woman who bears the child, some legal schools attribute the child to her because an illegitimate child inherits from his mother and her relatives, and they also inherit from him.⁹⁸ Therefore, if an illegitimate child can be attributed to his mother, then a child born by AI is entitled to be attributed similarly.⁹⁹ However, regarding the man whose sperm is inseminated, al-Sayyid al-Hakim said that the child should not be attributed to him because for a child to be attributed to a person such a person should have intercourse with the woman and has his sperm reach her reproductive organ during his effort.¹⁰⁰ Although this reason cannot be disregarded, the better reason for not assigning the child to the man is that there was no legal marriage between him and the woman who was inseminated with his sperm.

3.8.3 Status and Rights of Children Born Through In Vitro Fertilization Procedure

IVF is a laboratory procedure in which sperm are placed with an unfertilized egg in a Petri dish to achieve fertilization.¹⁰¹ IVF can be explained as a form of ART involving the joining of a man's sperm and a woman's egg in a laboratory to produce an embryo resulting in a test tube baby. It is used for treating infertility in males and females and serves as an avenue for lesbians and single mothers to have babies.¹⁰² Therefore, IVF is a medical technique through which a woman's egg is combined with the husband's sperm in a laboratory environment to promote fertilization.¹⁰³

Our concern here is not to examine the legality of the process but discuss the status of the child born and whether such a child is entitled to inherit the ownership of the sperm and egg as his parents. However, it is pertinent to briefly distinguish between husband-in vitro fertilization and that by a donor other than the husband. IVF by the husband covers all forms and techniques of IVF in which the semen donor is the recipient's husband.¹⁰⁴ In other words, where the sperm and egg of a lawfully

⁹⁸ Mushin, "Children by IVF and Surrogacy: A Juristic Study on Their Laws of Inheritance."

⁹⁹ Mushin, 33.

¹⁰⁰ Mushin, 33.

¹⁰¹ MedTerms Medical Dictionary, 'Online Medical Dictionary,' 2022, <http://www.medterms.com/script/main/art.asp?articlekey=7222>.

¹⁰² Adeleke, "Examining the Legal Status of Embryo Used in Reproductive Technology (IVF and ES) in Some Selected Jurisdictions," 83.

¹⁰³ Aliyu, "In-Vitro Fertilization and Artificial Insemination Under Islamic Law."

¹⁰⁴ Abdulrasheed and Okoh, 'Legal Challenges of In-Vitro Fertilisation (IVF) Under English and Islamic Law,' 38-39.

married couple are used, with the consent of the husband and wife sought and obtained before IVF is performed, such a child is the legal child of that marriage and has full rights to inherit both parents.¹⁰⁵

IVF by the donor is similarly an ART, in which fertilization is performed with sperm taken from the husband and an egg taken from a woman who is not the wife. Next, the embryo is placed in his wife's womb; or when fertilization takes place between sperm taken from a man who is not the husband. An egg taken from the wife, the embryo is placed in the wife's womb.¹⁰⁶ In both situations, donors are not a legal couple to each other. Therefore, the involvement of a third person is unacceptable and impermissible in Islamic Law. Hence, the widespread practice of ART facilities for sperm, ovum, and embryo donation and the "rental" of the uterus is incompatible with Islamic injunctions related to human reproduction.¹⁰⁷

The idea of third-party gamete donation is not acceptable to the majority of Muslims, Shi'ite and Sunni, because of the moral implications of third-party donation for marriage, potential for incest, and ethical consequences of donation for kinship and family life.¹⁰⁸ The major problem with third-party donations is that they destroy a child's lineage, confuse issues of kinship and inheritance, and make it difficult for a child to trace their biological mother and father.

Another crucial legal question concerning third-party donations is the legitimacy of the child's donation. In other words, despite being the genetic or biological father, the sperm donor cannot legitimately claim the paternity of the child¹⁰⁹ because such a process is haram, and any child resulting from such intercourse or insemination outside the bond of the valid marriage contract is an illegitimate child—*walad al-zina*, who is ascribed only to their mother and, as such, can only inherit from the birth mother.¹¹⁰ Oniye gave the following insights into this: The product of illegal intercourse between a man and a woman is, under the law, regarded as an illegitimate child. Therefore, such a child cannot inherit his father, for he is a by-

¹⁰⁵ Abdulrasheed and Okoh, 'Legal Challenges of In-Vitro Fertilisation (IVF) Under English and Islamic Law'.

¹⁰⁶ Abdulrasheed and Okoh, 45–46.

¹⁰⁷ Available at <https://www.ncbi.nlm.nih.gov/books> accessed on 22nd January, 2022 at 5.50 p.m.

¹⁰⁸ Clarke Morgan, "Shi'ite Perspective on Kinship and New Reproductive Technologies," *ISIM Review* 17 (2006): 26.

¹⁰⁹ Wizārat al-Awqāf wa-al-Shu'ūn Al-Islāmīyah, *Al-Mawsu'ah Al-Fiqhiyyah* (Kuwait: Wizarat al-Awqaf wa al-Shu'un al-Islamiyah, 1992), 237–55.

¹¹⁰ Mushin, 'Children by IVF and Surrogacy: A Juristic Study on Their Laws of Inheritance'.

product of *zina*. Likewise, the father cannot inherit *walad-zina*. The Prophet said: “The child belongs to one on whose lawful bed it is born.”¹¹¹

The import of the above quotation and the cited authority is that the child who is the product of the sperm used to fertilize the egg of his mother, which resulted in childbirth, cannot, under Islamic Law, inherit the donor of the sperm because there was no legal marriage between the donor and the mother. Therefore, they are *walad-zina*, who can only inherit from their mother. Equally, such a father, the sperm donor, cannot inherit such an illegitimate child because the latter is not his legal child.

This principle applies to other ARTs known as sperm/ova donation, which also involves a third party’s genetic material (sperm/ovum) by donating or outright sale, based on the case. This is a situation in which the wife is artificially inseminated by a sperm donor, or when she donates her egg (ovum) to a man other than her husband. The position of jurists of all schools of Islamic Law is that the source of the sperm, ovum, and uterus must come from a legally married couple during the subsistence of their marriage. Therefore, a third-party donor is not allowed in reproduction, whether they are providing sperm, eggs, or embryos.¹¹²

4. Conclusion

Islamic Law grants children the right to inherit from their parents, provided they are born within lawful marriage. Any child born outside wedlock is considered illegitimate (*walad al-zina*) and can inherit only from their mother and relatives. ART, including procedures such as AI and IVF, is permissible under Islamic Law while involving only a legally married couple’s genetic material. However, the use of third-party donors or surrogacy is prohibited, rendering the resulting children illegitimate with restricted inheritance rights. To preserve Islamic inheritance principles and avoid lineage confusion, ART should be strictly limited to legally married couples during their marriage. A collaborative fatwa by Islamic scholars is recommended to regulate ART practices, endorsing permissible methods while prohibiting third-party involvement and surrogacy.

¹¹¹ Oniye, *The Distribution of Estate in Islam (The Law and Practice)*, 9.

¹¹² Resolutions of Islamic Fiqh Council, Makkah, *Journal of International Islamic Fiqh Academy*, vol. iii, Part 1, 515 & 516, and the Fatwa of Sheikh Mahmond Shaltut, a former Head (Sheikh) of Al-Azhar, Cairo, al. www.islamonline.com.

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