

EXAMINING THE LEGALITY OR OTHERWISE OF ASSISTED REPRODUCTIVE TECHNOLOGY UNDER ISLAMIC LAW*

Abstract

This paper discussed the legality or otherwise of Assisted Reproductive Technology under Islamic Law. The types of Assisted Reproductive Technology such as artificial insemination, in-vitro fertilization, sperm donor/ova bank, surrogacy, artificial embryo nation and cryopreservation have been critically examined in this work with a view to discovering whether all or any of them is in conformity with tenets and principles of Islamic Law. The paper revealed that Islam gives strong and unequivocal emphasis to high fertility and also encourages marrying fertile women. It also encourages treatment of any kind of sickness including infertility. To that extent, any kind of Assisted Reproductive Technology can be performed if it is in consonance with principles of Islamic Law. The writer's major finding is that apart from surrogacy which is unanimously prohibited, all other types of Assisted Reproductive Technology is permissible so long as the egg from the wife is fertilized with husband's sperm and the fertilized embryo is transferred back to uterus of the same woman by an expert physician during the subsistence of the marriage between the two spouses. The paper recommended the use of any types of Assisted Reproductive Technology apart from surrogacy for the couple especially those who are genuinely suffering from infertility.

Keywords: Infertility, In-Vitro Fertilization, Surrogacy, Artificial insemination, Cryopreservation.

1. Introduction

The importance of fertility between two legal partners in Islamic Law cannot be overemphasised as the ability to bear children is one of the crucial basis of a healthy and beneficial marriage. Marriage conducted in accordance with Islamic rules and teachings maintains the continuity of human race on earth and it is also the only appropriate way of procreation. Infertility is the inability of a couple to conceive after one year or several months of regular, unprotected intercourse¹. Infertility has been one of the greatest problems or challenges that both men and women have been encountering from a very long time.² Islam gives strong and unequivocal emphasis to high fertility, in other words, Islam encourages fertile woman who will give birth to many children. The Prophet (SAW) was reported to have said that: 'Marry the kind and fertile women who will give birth to many children for I shall take pride in the great numbers of my ummah (Nation).'³ In other *hadith*, it was reported that:

A man came to the Prophet Muhammad (SAW) and said: I have found a woman of rank and beauty, but, she does not give birth to children. Should I marry her? He said No. He came again to him, but, he prohibited him. He came to him third time. The Prophet Muhammad (SAW) said: Marry women who are loving and very prolific, for I shall outnumber the peoples by you.⁴

The two prophetic traditions show that Islam encourages men to marry women who are able to give birth to or bear many children rather than the barren or infertile women. In other words, the status, beauty and position of the woman are immaterial so long she is unable to bear children. Apart from the above two *hadith* which encourage marrying women who are prolific, Islam also encourages both men and woman to seek for children in order to avoid complete destruction of their traces. The Prophet was reported to have said that: 'No one of you should lag behind in seeking progeny because if he dies while having no children, his traces will be wiped out.'⁵ Under Islamic law, the only recognized means of obtaining children is by bearing or giving birth to them. However, in recent time, with advancement of science and technology, the desperate quest for children led to the development of a new process of procreation that is reproduction by an assisted technology which is known as Assisted Reproductive Technology (ART). This is the medical procedure being used to address the problem of infertility in the present time. It involves procedure such as in-vitro fertilization, sperm injection, the use of fertile drugs etc. Assisted Reproductive Technology involves all fertility treatments that handle both the women's egg and men's sperm. This technology has helped a lot of married couples suffering from infertility to bear or obtain offspring of their own.

This paper seeks to discuss Assisted Reproductive Technology, meaning, history and types. In discussing this, the paper will briefly explain the legal meaning and medical procedure of artificial insemination, in-vitro fertilization, sperm donor/ova bank, surrogacy and cryopreservation. The paper takes a critical look at and examines the legality or otherwise of Assisted Reproductive Technology under Islamic Law taking into consideration the views of Sunni school of law. The paper concludes with suggestions and necessary recommendations.

2. Dealing with Infertility in Islam

It is natural that every human being desires to have children. The Qur'an says in *Surah al-kahf* that: wealth and children are an adornment of the life of this world,⁶ Also in *Surah al-Hadid*, Allah says that, know that this world's life is a vying in the multiplication of wealth and children, like the rain.⁷ This means that in this world, families seek, value and attach more importance to two things: wealth and children. They believe that the comfort of the family largely rests on having wealth and

*By Yahaya Ibrahim ABIKAN, PhD, Lecturer, Faculty of Law, Lagos State University, Ojo, Lagos. Email: abikanibrahim@gmail.com. Tel: 08033911239, 08088987044.

¹ Jalee Idris, 'Islamic Jurisprudence and Reproductive Health: Application', *Crescent University Law Journal* (2018) (3) 11.

² See Qur'an, 19:5-6; 3:38; 21:89-90; 37:100-101 and 51:28

³ Sunnan Abi Dawud, Hadith No. 2050, Mak' tib Al Maaref, Riyadh.

⁴ Sunnan Abi Dawud, 2050, Narrated by Ma' qil Ibn Yasar, Book 12 Hadith 5.

⁵ See "Islamic Position on Artificial Insemination" www.islamic.voice.com; accessed on the 14th day of December, 2021 at 12:45 p.m.

⁶ Qur'an 18:46.

⁷ Qur'an 57:20.

children. That is why the Qur'an describes one of the prayers of the believers in *Surah al-Furqan* thus: And they who say: O our Lord! Grant us in our wives and our offspring who will be the comfort of our eyes.⁸ Because of the importance of the children to the family, certainly, it is normal, natural and appropriate to seek a cure for infertility. Then, how do we lawfully cure or deal with the problems of infertility in Islam. The family believes that without child or children who will inherit them, their traces will be destroyed or wiped out. This belief has the support of the prophetic tradition which says that: No one of you should lag behind in seeking progeny because if he dies while having no children, his traces will be wiped out.⁹ This was the same fear entertained by Prophet *Zakariya* that if he dies without a child who will inherit him, his traces will be destroyed or wiped out. He said in *Surah Maryam* thus:

And verily, I fear my relatives after me, and my wife is barren. So give me from Yourself an heir. Who shall inherit me, and inherit (also) the posterity of Ya'qub (Jacob) (inheritance of the religious knowledge and prophethood, not of wealth). And make him, my Lord, one with whom You are well-pleased.¹⁰

Also in *Surah Al ' Imran*, Allah said: 'At that time, Zakariya invoked his Lord, saying: " O my Lord! Grant me from You, a good offspring, You are indeed the All-Hearer of invocation."¹¹ Also in *Surah al anbiyah*, Allah says:

And (remember) Zakariyah, when he cried to his Lord. " O my Lord! Leave me not without offspring, though, You are the best of inheritors.' So, We listened to him and granted him Yahaya (John). We cured his wife (barrenness) for him. They were ever quick in emulation in good works; they used to call on us with love and reverence, and humble themselves before us.¹²

Also Prophet Ibrahim cried to Allah to cure the infertility of his wife and give him a child. He said, My Lord! Grant me of the doers of good deeds¹³ and Almighty Allah answered his prayer saying that: So, We gave him the good news of a boy, possessing forbearance.¹⁴ Also in *Surah adh-Dhariyat*, Allah said: ' So, he conceived in his mind a fear on account of them. They said: Fear not. And they gave him the good news of a boy endowed with knowledge'.¹⁵ Based on the above Quranic provisions, it is observed that the infertility medicine used employed by the two Prophets of Allah is the prayer. This mean that the first medicine for infertility or barrenness is the prayer and making supplications to Almighty Allah who has promised His readiness to answer such prayer. He says that: 'And when My servants ask you concerning Me, then surely I am very near; I answer the prayer of the supplicant when he calls on Me, so they should answer My call and believe in Me that they may walk on the right way'.¹⁶ It was on the basis of the promise of Allah that whoever makes supplication concerning any difficulty or hardship or suffering, he would answer him if such person too answers the call of Allah and has belief in Him the way He answered the prayers of Prophet Zakariya and Prophet Ibrahim.

From the above Quranic provisions and prophetic traditions, one can conveniently conclude that Islam recommends prayers and making supplications to Allah as the first step in the treatment and seeking the cure for infertility. Prophet Zakariya identified the barrenness or infertility of his wife as a fundamental or hardship and sickness which is curable and can be cured by Almighty Allah. It is to be observed that good health is a blessing from Allah, sickness such as infertility or barrenness is a form of trial. Although, it is a trial, every sick person in Islam is advised to seek lawful cure as Allah has provided a cure for every illness including infertility. Such advice is clearly laid down in a *hadith* where the Prophet (SAW) is reported to have said they: Seek cure, for verily there is a cure for every illness (Tadawu finna likulli dain dawaun).¹⁷

Since Islam acknowledges that infertility is a sickness it also encourages Muslim to tackle it by seeking lawful cure to it. The two Prophets of Allah Prophet Zakariya and Prophet Ibrahim who suffered from childlessness tackled or treated the infertility or barrenness of their wives with prayers to Almighty Allah and the latter answered them, cured their wives' infertility and gave them sons. Now, the question is here is, whether a Muslim can limit himself to the prayers alone or extend his effort to other form of treatments in order to seek cure for his or her spouse's infertility. It is submitted that fertility is a sickness and problem as well and Islam permits all Muslims facing any problem or hardship to explore or use all lawful means that will assist them to overcome the challenges. The Prophet (SAW) was reported to have said that: There is no disease/sickness that Allah has created, except that He also has created its treatment.¹⁸ Also in another narration where the Prophet was asked if medical treatment could be used to tackle infertility, the Prophet said that: 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.¹⁹

⁸ Qur' an 25:74.

⁹ See ' Islamic Position on Artificial Insemination' www.islamic.voice.com; accessed on the 14th of December, 2021 at 12.45 p.m.

¹⁰ Qur' an 19:5-6.

¹¹ Qur' an 3:38.

¹² Qur' an 21:89-90.

¹³ Qur' an 37:100.

¹⁴ Qur' an 37:101.

¹⁵ Qur' an 51:2.

¹⁶ Qur' an 2:186

¹⁷ Narrated by Dawud as cited by Zainal Azam Abdul Rahman, ' Medical Practice: An Islamic perspective' Published in Puteri Nemie Jahn Kassim (ed) *Issues in Medical Law and Ethics*, Medical Law and Ethics Unit Law Centre, Ahmad Ibrahim Kulliyah of Laws, International Islamic University, Malaysia, 118.

¹⁸ Sahih al-Bukhari 5678, Narrated by Abu Huraira, Book 76 Hadith 1.

¹⁹ Sunnan Abi Dawud 3855 Narrated by Usamah ibu Sharik.

Based on this *Hadith*, Islam does not restrict Muslims to only prayer for the remedy or treatment of bareness or infertility. The *Hadith* has in fact and indeed permits seeking for medical help in order to solve the problem of childlessness or infertility. Although, cure is in the hands of Allah as said in *Sura ash-Shuara*, thus: ‘And when I am sick, it is He who cures me’²⁰ yet, one should make efforts through lawful medical intervention to address the infertility.

3. Definition of Assisted Reproductive Technology

Assisted Reproductive Technology includes medical procedures, used primarily to address infertility. This subject involves procedures such as in vitro fertilization, intracytoplasmic sperm injection, cryopreservation of gametes or embryos, and/or the use of fertility medication.²¹ Assisted Reproductive Technology (ART) refers to fertility treatments and procedures that can help an infertile couple to conceive children. ART techniques involve the manipulation of eggs, sperm or embryos to increase the likelihood of a successful pregnancy.²² According to the definition of Centre for Disease Control, ART includes all fertility treatments in which either eggs or embryos are handled. In general, ART procedures involve surgically removing eggs from a woman’s ovaries, combining them with sperm in the laboratory and returning them to the woman’s body or donating them to another woman.²³ They do not include treatments in which only sperm are handled (such as intrauterine or artificial insemination) or procedures in which a woman takes medicine only to stimulate egg production without the intention of having egg retrieved.²⁴

From the above definitions, it is understood that Assisted Reproductive Technology is a medical procedure or process whereby an egg surgically removed from a woman’s ovaries are combined with sperm outside the body, that is, in a laboratory. The fertilised egg will then be returned or transferred to the same or another woman’s uterus with the intention of establishing a successful pregnancy and eventual childbirth.²⁵ In other words, it is a process by which eggs are removed from a woman’s body, the eggs are then mixed with sperm to make embryos. The embryos are then put back in the same woman or another woman’s body.²⁶

4. Brief History of Assisted Reproductive Technology

Dr. Edwards, an embryologist and Dr. Steptoe, a gynecologist in the United Kingdom first pioneered the fertility technique called In-Vitro Fertilisation Pre-Embryo Transfer (IVF-ET). In July 1978, they announced to the world the birth of the first test-tube baby, Louise Brown which was a landmark achievement in the science of reproductive medicine.²⁷ Since then, many Assisted Reproductive Technologies have emerged, which have improved and replaced previous technologies.²⁸ The use of medical technology to improve fertility is a topical issue that cannot be overemphasised, as recent studies show that Assisted Reproductive Technology (ART) is responsible for between 219,000 and 246,000 babies born each year worldwide.²⁹ Since then, IVF has become one of the most successful means for infertile couples to have children.³⁰

5. Types of Assisted Reproductive Technology

Assisted Reproductive Technologies are methods used via scientifically assisted means of possessing progeny. It is not the conventional or natural ways of acquiring children; yet, it is under the reproductive rights. Artificial human reproduction is the general concept of technologically assisted human reproduction. It comprises of the following: Artificial Insemination (AI), In-Vitro Fertilisation (IVF), Sperm donor/over bank, Embryo adoption, Egg transfer, Surrogate parenting, Human Cloning, Genetic engineering among others. Some of above methods of assisted reproduction or scientifically assisted human reproduction, though not exhaustive, shall now be discussed in turn will a view to seeing their respective nature.

Artificial Insemination

According to Black’s Law Dictionary, artificial insemination is defined as a process for achieving conception, whereby semen is inserted into a woman’s vagina by some means other than intercourse.³¹ Webster’s Ninth New Collegiate Dictionary defines it as introduction of semen into the uterus or oviduct by other than natural means.³² Aliyu defines it as a process through which female ova is fertilised with male sperm and then the resultant embryo is planted into the uterus of a woman who will carry

²⁰ Qur’ an 26:18.

²¹ Available at <https://www.ncbi.nlm.nih.gov> books assessed on the 15th January, 2022 at 3.30 p.m.

²² Available at <https://www.cdc.gov/art/whatis> accessed on the 15th January, 2022 at 3.30 p.m.

²³ Ibid.

²⁴ Al-Inany HG, ‘Gonadotrophin – releasing, hormone antagonists for assisted reproductive technology’ (PDF). The Cochrane Database of Systematic Reviews retrieved from <https://www.cdc.gov/art/whatis> accessed on the 15th January, 2022 at 3.30 p.m.

²⁵ See the Webster’s Universal Dictionary & Thesaurus (Published by Geddes & Grosset, Glassgow, 2010) 1263, Bryan A. Garner, *Black’s Law Dictionary*, (West Publishing Company, USA, 2009) 1582 to 1583.

²⁶ Procedure of Donor available at <https://medlineplus.gov/assistedreproductivetechnology.html> last visited 15th January, 2022 at 4.45 p.m..

²⁷ Steptoe P C, Edwards, R G, ‘Birth after Re-implantation of a Human Embryo’, *Lancet* 2:366, 1978 (Pub Med) (Cross Ref).

²⁸ Robert, F *Utopian Motherhood: New Trends in Human Reproduction*, (London: George Allen & Unwin), 1971, 11.

²⁹ Available at <https://www.ncbi.nlm.nih.gov> books last visited 15th January, 2022 at 4.25 p.m..

³⁰ Gilbert Scot, ‘Bioethics and the New Embryology’; M. A. Sinauer Associates, Inc Sunderland, 2005, 65.

³¹ Bryan A., Garner, *Black’s Law Dictionary*, Eight edition, Thomson Wert, 121.

³² Webster’s Ninth New Collegiate Dictionary, Merriam-Webster Inc., USA, 106.

the pregnancy and delivers the baby.³³ From the above definitions, if it is understood that artificial insemination is the process of placing of sperm inside the woman's vagina or uterus by means other than sexual intercourse. It is also a procedure by which sperm is inserted directly into a woman's cervix, fallopian tubes, or uterus in the hope of getting pregnant. The most common method is called intrauterine insemination (IUI).³⁴ By this process, semen is used to make a woman pregnant without sexual intercourse. It is to be observed that the semen to be injected into the woman's uterus may be donated by the recipient's husband or someone other than the woman's husbands and wife.³⁵ Sperm is usually obtained for this procedure through either of the two ways: Most commonly the man masturbates into a sterile glass or plastic cup provided by the doctor or andrology laboratory and by inserting the penis inside a special sheath (condom like) prior to intercourse.³⁶

In-Vitro Fertilisation (IVF)

In-vitro is a Latin phrase which means "in glass", in embryology, it is used in contrast with *in-utero* meaning in the uterus. While under normal circumstance, the natural process of human procreation involves the fertilization of sperm and egg which takes place in the woman's uterus, strictly speaking, in the fallopian tubes when a sperm cell unites with an ovum. In contrast, *in-vitro* fertilization (IVF) is fertilization that is artificially performed outside the woman's body, that is, in a test tube. *In vitro* fertilization (IVF) is a laboratory procedure in which sperms are placed with an unfertilised egg in a Petri dish to achieve fertilization.³⁷ It is also the process by which an egg is fertilised outside a woman's body and then inserted into the woman's womb for gestation.³⁸ It is understood from the above different definitions that *in-vitro* fertilization may be explained as a form of Assisted Reproductive Technology (ART) involving the joining of a man's sperm and a woman's egg together in a laboratory to produce an embryo resulting in a test tube baby. It is basically used to treat infertility in both males and females and also serves as an avenue for the lesbians or single mothers to have babies.³⁹

Sperm Donor/Ova Bank

In some cases, the husband may be unable to produce any sperm at all, (a condition called a zoospermia) or he may be suffering from neurological condition that makes it impossible for him to ejaculate or he may be suffering from certain diseases like diabetes, which renders him impotent. He may also be a carrier of a dominant gene for a genetic disorder. If any of such condition exists, it is still possible for such a man to have his wife inseminated with the sperm of a donor. This explains the reason for the existence of a sperm bank in some advanced countries.⁴⁰ An ova bank or cryobank or egg cell bank is a facility that collects and stores human ova, mainly from ova donors, primarily for the purpose of achieving pregnancies of either the donor, at a later time, (that is to overcome issues of infertility) or through third party reproduction, notably artificial insemination. Ova donated in this way are known as donor ova.⁴¹ It is to be observed that scientifically, the term pregnancy is only said to result when the sperm from the man fertilises the female ovum. The fetus or finally child resulting is said to be a product of the union of the man and woman whose sperm and ovum coupled and fertilised. The husband either produces no sperm or in some instance he produces sperm but, not viable. It could also be that the woman produces no egg but, has all features that can carry pregnancy to maturity. Therefore, the whole of this process can occur in the other way with the woman donating her eggs (ovum).⁴²

Artificial Embryonation/Embryo Adoption

Embryo adoption allows the family with remaining embryos to select a recipient family for their embryo gift. The adopting family is able to use the donated embryos to achieve a pregnancy and give birth to their adopted child.⁴³ This method involves the transfer of an already fertilised egg from another woman and placing it in the uterus of one's wife. If attachment to the uterine wall is successful then, development of the embryo would take place in the normal fashion.⁴⁴ Artificial embryonation requires fleshing an embryo from a woman who has artificially been inseminated by a donor's sperm, then, implanting the embryo in the womb of the donor's wife. While embryo adoption or parental adoption, involves both donor sperm and donor egg but, they would be transferred to the womb of the recipient and she would bring the foetus to both. Egg transfer is a kind of technique which involves the transfer of an egg of another woman into the uterus of a man's wife.⁴⁵ It is submitted that the above techniques are opted for in the event that one's wife may not be in a position to ovulate or perhaps she has no fallopian tubes at all. These techniques may also be resorted to where something abnormal causing blockage of the fallopian tubes or where one's tubes may be damaged. Undoubtedly, these three techniques can positively assist an infertile woman to

³³ I. A. Aliyu, 'In-Vitro Fertilisation and Artificial Insemination in Islamic Law', *Ahmadu Bello University Law Journal*, A.B.U.L.J. 135.

³⁴ Available at <https://www.webmd.com> Guide accessed on the 17th January, 2022 at about 6.30 p.m.

³⁵ Bryan A. Garner (n 34) 121.

³⁶ Available at <https://www.reproductivefacts.org>. accessed on the 17th January, 2022 at 6.30 p.m.

³⁷ See online medical dictionary [https://www.medterms.com/script/main/art-asp?article key=7222](https://www.medterms.com/script/main/art-asp?article%20key=7222) accessed 17th January, 2022 at 4.30 p.m.

³⁸ See the Webster's Universal Dictionary & Thesaurus (Published by Geddes & Grosset, Glasgow, 2010, 1263; Bryan A. Garner, Black's Law Dictionary (West Publishing Company, USA, 2009, 1582 to 1583).

³⁹ 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 (2010) (1) 83.

⁴⁰ A. M. Ebrahim, *Abortion: Birth Control and Surrogate Parenting; An Islamic Law Perspective*, (Kuala Lumpur, Malaysia: A. S. Noordeen, 1989, 34.

⁴¹ Available at [en.m. wikipedia.org](https://en.m.wikipedia.org) assessed on the 15th January, 2022 at 2.50 p.m.

⁴² A. M. Ebrahim (n 43) 34.

⁴³ Available at <https://nightlight.org/embryo.adop> – accessed on the 22nd January, 2022 at about 9.40 p.m.

⁴⁴ A. M. Ebrahim, (n 43) 34.

⁴⁵ *Ibid*.

bear a child and even give birth to it. But there is a problem in the case of egg transfer because the woman will bear a child who would have half of the genetic identity of her husband and none of her own. However, in the case of embryonation or embryo adoption, the child would have neither the genetic compliments of her husband nor of herself.

Surrogacy

Another form of Assisted Reproductive Technology is surrogacy. According to Black's Law Dictionary, surrogacy is the act of performing some functions in the place of someone else.⁴⁶ Webster's New Collegiate Dictionary defines surrogate as one appointed to act in the place of another.⁴⁷ Surrogate mother has also been defined by Black's Law Dictionary 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.⁴⁸ It is understood from the definitions above that surrogating parenting exists in a situation where a woman bears a child for another woman who cannot bear children of her own due to either a blocked fallopian tube or a complete absence of a uterus. There are two types of surrogacies, partial and complete. In partial surrogacy, a couple will solicit or commission a woman to be artificially impregnated by the "husband's" semen. The surrogate will then carry the pregnancy to term, and upon birth, hand the baby over to the soliciting couple. In this case, the child will have the rearing father as the biological father, a rearing mother, and a biological birth mother.⁴⁹ In a complete surrogacy, the commissioning couple will undergo In-vitro fertilization (IVF), the embryo produced by IVF is transferred then to a surrogate woman. The surrogate gives the baby to the soliciting/rearing couple at birth. In this case, the biological parents are the rearing couple and the surrogate is the birth mother.⁵⁰ In this type, the genetic mother is made to undergo in-vitro fertilization so that her egg will be collected. The eggs collected will be fertilised in a laboratory with her partner's (whether husband or not) sperm. The fertilised egg develops into an embryo. The selected embryo will be inserted into the prepared uterus of the gestational carrier. At the birth, the surrogate hands the child over to the couple.⁵¹

Cryopreservation and the Use of Preserved Sperm

In medical terms, cryopreservation is the freezing and storage of gametes, zygotes or pre-embryos. Essentially, cryopreservation is used for two purposes. The sperm is processed and is kept and thawed at a later date, and with the patient's consent is used to fertilise the ovum from the wife. Similarly, ART procedures often result in the availability of numerous spare pre-embryos that are not transferred into the uterus of the mother.⁵² Cryopreservation or freezing techniques are able to store pre-embryo up to a few years which can be thawed and returned to the uterus of the same woman whenever she decides to have a child. The advantages of freezing embryos would be that the woman might not have to undergo the drug stimulation cycle again, and to serve her the side effects of the stimulant drugs that are used.⁵³

6. The Legality or Otherwise of Assisted Reproductive Technology under Islamic Law

Unlike the doctrine of the Hebrew Essenes and the early Christian ascetics, but, in common with the main body of Jewish and other human traditions, Islam recognizes the value of sex, advocates and emphasizes the vital role of the institution of marriage and the family structure.⁵⁴ It strongly discourages celibacy, even for ascetic reasons. The normal, natural course of behaviour for a Muslim is to establish a conjugal family of procreation.⁵⁵ To this effect, Allah says in *Surah An-Nahl*, thus: 'And Allah has given you wives of your own kind, and has given you, from your wives, sons and grandsons, and has made provisions of good things for you.'⁵⁶ Artificial reproduction is not mentioned in the primary sources of Shariah, however, where infertility occurs to either or both of the couples, Islam encourages treatment to cure the infertility. Thus, attempts to cure infertility are not only permissible, but also encouraged.⁵⁷ Assisted Reproductive Technology is being used today for two main objectives. First, is the employment of ART as a succor to infertile couples through technologically advanced medical intervention to assist them to have issues of their own. The other classes of people are those who may not necessarily be barren, but, are also availing themselves of ART opportunity.⁵⁸

The Islamic 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.⁵⁹ Furthermore, Muslims are allowed and even encouraged to seek lawful cure of any form of illness or disorder that may be affecting them. The *Hadith* narrated on the authority of Usamah bin Shurark succinctly put it as follows: The Prophet (SAW) said that: 'Seek remedy (of your illness) for Allah has never created an illness unless He

⁴⁶ Bryan A. Garner, *Black's Law Dictionary*, Eight ed. Thomson West, 2004, 1485.

⁴⁷ Webster's Ninth New Collegiate Dictionary, Merriam-Webster Inc, USA, 1188.

⁴⁸ Bryan A. Garner (n 49) 1036.

⁴⁹ Available at <https://www.ncbi.nlm.nih.gov/books> – accessed on 12th December, 2021 at 7.30 a.m.

⁵⁰ Ibid.

⁵¹ Ibid.

⁵² Available at <https://www.ncbi.nlm.nih.gov/books> accessed on 12th December, 2021 at 7.30 a.m.

⁵³ Available at <https://www.academia.edu> Assist – accessed on 11th December, 2021 at 4.55 p.m.

⁵⁴ Hammudah 'Abd al' Ati, *The Family Structure in Islam*, Islamic Publications Bureau, Lagos, 1982, 52.

⁵⁵ Ibid.

⁵⁶ Qur'an, 16:72.

⁵⁷ Available at <https://www.academia.edu> Assist – accessed on 11th December, 2021 at 4.55 p.m.

⁵⁸ Abdul-Razzaq Abdul Majeed Alaro, 'Assisted Reproductive Technology CART: The Islamic Law Perspective' Berna Arda & Vardit Rispler-Chaim (eds.), *Islam and Bioethics* (Ankara University, Turkey) 85 - 97.

⁵⁹ Ibid.

has also created a cure for it, save (the illness of) old age.⁶⁰ It has been observed that with the exception of 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, that is, to cure a barren woman of her infertility. The earlier quoted *hadith* clearly establishes that ‘For every illness, there is a cure’ and taking advantage of such lawful treatment or cure, which is not in itself forbidden, is in total conformity with the principle of Islamic Law. Based on this premise, Artificial Insemination (AI) and In-Vitro Fertilisation (IVF) as remedies to infertility are adjudged by Muslim jurists as permissible, provided these are not predicated on frivolous medical reasons, and are devoid of any introduction of a third party donor.⁶¹

In-Vitro Fertilisation under Islamic Law

There is a proliferation of views of Muslim Jurists on this issue, that is, whether or not it is permissible in Islam to result to this procedure due to infertility. It has been observed that the use and development of Assisted Reproductive Technology is by all means known to Islamic Law as even in the days of the Holy Prophet Muhammed (SAW), plants and animals were multiplied using this viral technology.⁶² The imperativeness of childbirth to human development is aptly underscored by the *Hadith* of the Prophet (SAW) where he enjoined mankind thus: ‘None of you should lag behind in seeking progeny because if he dies while having no children, his trases will be wiped out.’⁶³ Sheikh Ahmad, an Islamic Scholar at the Islamic Institute of Toronto, Ontario, Canada says thus:

Scholars and Jurists have discussed this issue, which is most commonly known as In-Vitro Fertilisation, and they have concluded that it is perfect acceptable within the boundaries of marriage to do so. In other words, it is permissible so long as both the sperm and egg involved in the procedure come from the SAME married spouses. Thus, if the husband’s sperm is extracted and it has been fertilised with the egg of the spouse inside a test tube, and then, it has been implanted into the spouse’s womb for conception that is perfectly acceptable according to the teachings of the *Shariah*.⁶⁴

It is submitted that it can be understood from the above that all Assisted Reproductive Technologies are permitted in Islam, if the semen source, ovum source and the incubator (uterus) come from the legally married husband and wife during the span of their marriage.⁶⁵ Muslim jurists are unanimous on the fact that the test-tube as well as laboratory where the process of in-vitro fertilization is performed should be free from semen or ova adulteration and therefore safe for the production of children of pure blood.⁶⁶ It is most desirable that in-Vitro Fertilisation should be conducted under meticulous as well as safe laboratory conditions, and it is envisaged that the owners of those laboratories or clinics should be trustworthy people who will not manipulate, tamper, alter or interfere with the process of fertilization. The board of the Islamic *Fiqh* Council holds the process as legitimate as long as no other third party is involved.⁶⁷

In-Vitro Fertilisation is permissible for conceptual purposes under Islamic Law in situations where the husband is not able to deposit his semen inside his wife’s genital tract. The procedure is only allowed in Islam as long as it is between legally married couples during the life of the husband.⁶⁸ The current success rate, measured by fertilizations resulting in a live birth, is between 20 and 30% IVF, with its various modifications, that is GIFT (Gamete Intra-fallopian transfer), ICSI (Intracytoplasmic sperm injection)⁶⁹ etc. has been declared Islamically permissible, only if the following conditions are satisfied. First, the IVF must involve a married couple. Second, the sperm must be from the husband, and the eggs from the wife. Third, this must occur within the context of a valid marriage. Fourth, the procedure must be conducted by a “competent team” in order to reduce the chances of failure or mixing of zygotes and pre-embryos of different couples when kept in liquid nitrogen. Fifth, surrogacy is not accepted. Finally, no more than the appropriate number of fertilised eggs should be transferred to the uterus.⁷⁰ It is common to transfer only two to three fertilised eggs, although, there are usually more fertilised eggs produced. Many centres transfer only one or two fertilised eggs.⁷¹ Freezing the remaining fertilised ova is permissible by some Islamic scholars as long as they are only used in subsequent cycles for the same couple, and the couple is still legally marriage. The fate of the unused eggs has not set been decided upon. It is permissible to use them for medical research with the consent of the couple and within

⁶⁰ An authentic *hadith* narrated by Tirmidhi, vol. iv, p. 383, Abu Dawud, vol. ii, p.396; and Ibn Majah, vol. ii p.1137. <https://www.iium.edu.my/deed/hadith/abudawood/002asat.html> accessed 18th December, 2021.

⁶¹ Jayzan; Muhammed, ‘*Fiqh al-Nawazil*’, *Journal of International Islamic Fiqh Academy*, Jeddah, Dammam, Ibn al-Jawzi Publishers, 2005, vol. iv, 85-87.

⁶² Yusuf Abdulrasheed and Sheriff E. Okoh, ‘Legal Challenges of In-Vitro Fertilisation (IVF) Under English and Islamic Law’, *Unilorin Shari’ah Journal* (2016) (3) (1) 42.

⁶³ Sahih Bukhar: Volume 4, Book 56 Number 566.

⁶⁴ As quoted by Yusuf Abdulrasheed and Sheriff E. Okoh (n 62) 43.

⁶⁵ Fidel, H.E., ‘Prospects and Ethics of Stem Cell Research: An Islamic Perspective’, *Journal of Islamic Med. Assoc.* 39 (2): 73-84.

⁶⁶ Yusuf Abdulrasheed and Sheriff E. Okoh (n 62) 43.

⁶⁷ Ibid.

⁶⁸ Ibid.

⁶⁹ Intracytoplasmic sperm injection is a process by which the doctor uses a tiny needle to manually insert a single sperm into an ova.

⁷⁰ Fadel H.E. ‘The Islamic Viewpoint on New Assisted Reproductive Technologies’, *Fordham Urban Law Journal*, 30(1): 147-157. Available at <https://www.nbcbi.n.nih.gov/books> accessed on the 20th January, 2022 at about 10.30 a.m.

⁷¹ Ibid.

the appropriate guidelines.⁷² However, the International Islamic *Fiqh* Academy of Organisation of Islamic Conferences (OIC-IFA) in 1990 refused the freezing of the pre-embryos as occurrences of mixing of gametes and pre-embryos happened.⁷³

Chief amongst the forbidden processes of In-Vitro Fertilisation are the following 5 (five) methods which do not accord with the core values of Islamic Law:

1. When fertilization takes place between sperm taken from the husband and an egg taken from a woman who is not his wife, then, the embryo is placed in his wife's womb.
2. When fertilization takes place between sperm taken from a man who is not the husband, and an egg taken from the wife, then, the embryo is placed in the womb of the wife.
3. When fertilization is done externally between the sperm and egg of the couple, then, the embryo is placed in the womb of a woman who volunteers to carry it (surrogate motherhood).
4. When fertilization is done externally between the sperm of a man who is not the husband and the egg of a woman who is not the wife, then, the embryo is placed in the womb of the wife.
5. When fertilization is done externally between the sperm and egg of the two spouses, then, the embryo is placed in the womb of another wife (of the husband).⁷⁴

It can be understood that the inherent danger in each of the above five method is that each method can cause or lead to mixing up of the lineages of the child(ren) who are products of the processes and also the true identity of the real mother or father may be wiped out. A scholar has opined and this writer agrees with him that there is nothing wrong as far as Islam is concerned, in carrying out the process of in-vitro fertilization while the husband is jailed or is fighting a necessary war as a soldier or is not disposed to having natural insemination by way of sexual intercourse with his spouse due to distance in residence or place of work, provided that the semen is his, and there is no third party involved, otherwise, it is not permissible to carry out the operation.⁷⁵

Third party Assistance

The dyad of the legal husband and wife must not be intruded by any third party. The involvement of a third person in the equation is totally unacceptable and impermissible whether this takes the form of a sperm, an ovum, an embryo or a uterus. Hence, the widespread practice in Assisted Reproductive Technology facilities of sperm, ovum, and embryo donation and the rental of uterus is incompatible with the Islamic injunctions related to human reproduction.⁷⁶ In fact, scholars have unanimously condemned the procedure of in-vitro fertilization in case a third party is introduced into the equation: That would be the case if either the sperm or egg involved in the above process were obtained from either man or woman who is not related to each other in marriage.⁷⁷ It is submitted that Islamic law position on this issue is that no third party should intrude into the marital functions of sex and procreation, because, marriage is, strictly, a contract between the wife and husband during the span of their marriage. This means that a third party donor is not allowed, whether he or she is providing sperm, eggs, embryos or a uterus. The use of a third party is tantamount to *zina* or adultery as far as Islamic Law is concerned. Abdurrasheed and Okoh gave an insight to this as follows:

When resort is made to semen given by a fertile donor or a 'semen bank' for the purpose of In-Vitro Fertilisation, it is impermissible, except the woman is legally married to the donor at the time of the donation. In essence, it is the view of the authors that, when the donors and recipients remain unknown to each other and written consent is taken from the recipient and her husband for the impregnation of the wife, the process is forbidden under Islamic Law, as it tantamount to *Zina*, notwithstanding the excuse that the procedure can put an end to the problem of the fertile wife of an infertile husband.⁷⁸

It is submitted that the import of the above observation is that all Assisted Reproductive Technologies are permitted in Islam, if the semen source, ovum source and uterus come from the legally married husband and wife during the subsistence of their legal marriage without involvement or intrusion of the third party's sperm or eggs. It is also submitted that the artificial embryonation which also involves the transfer of an already fertilised egg from another woman and placing it in the uterus of one's wife is also prohibited in the sense that it accommodates third party assistance which is not acceptable or permissible under Islamic Law.

Position of Islamic Law on Cryopreservation

Cryopreservation in itself entails no infringement of the Islamic Law, but scholars have cautioned that the frozen embryos are the exclusive property of the couple who produced the gametes alone, and may be transferred only to the same wife in a successive cycle, restrictively during the duration of the marriage contract. There is a *fatwa* (Islamic ruling) that the stored sperm of the jailed husband can be used to impregnate his legitimate wife through artificial insemination where it is proven that the union between the couple still exist.⁷⁹ However, storing the husband's sperm for the purpose of impregnating the wife

⁷² Ibid.

⁷³ Ibid.

⁷⁴ See 'Islamic Position on Artificial Insemination' www.Islamic.voice.com accessed on the 20th of January, 2022 at 12:30 p.m.

⁷⁵ Yusuf Abdurrasheed and Sheriff E. Okoh, (n 62) 47.

⁷⁶ Fadel, H. E. (n 73). Available at <https://www.ncbi.nlm.nih.gov/books> accessed on 22nd January, 2022 at 5.50 p.m.

⁷⁷ See 'Islamic Position on Artificial Insemination' www.islamic.voice.com as cited in Yusuf Abdurrasheed and Sheriff E. Okoh (n 65) 43.

⁷⁸ See www.islamicvoice.com as quoted by Yusuf Abdurrasheed and Sheriff E. Okoh, (n 62) 46.

⁷⁹ Available at <https://www.ncbi.nlm.nih.gov/books> - accessed on 22nd January, 2022 at 5.50 p.m.

in the event of his death is illegal. Under Islamic Law, death terminates the marriage contract, and the widowed wife is free to remarry after the mandatory waiting period (al-Iddah).⁸⁰ Equally, the cryopreserved sperm or pre-embryo of an ex-husband in case of divorce should not be used either, as divorce equally renders the union void, legally.⁸¹ The *Fatwa* (Islamic ruling) issued by the European Council for *Fatwa* and Research states that 'It is permissible for the wife to use the sperm of her husband for fertilization unless she is divorced or the husband dies.'⁸² In support of this *Fatwa*, Sheikh Abdul-Khaleq Hassan Ash-Shareef, the prominent Muslim scholar and Da'iyah states the following: 'It is not permissible for the woman to use the frozen sperm of her husband after divorce or after his death. The issue is permissible only when both the husband and wife are living together (in essence, they are not divorced) and both of them are alive'.⁸³ The import of above *Fatwa* and view of Ash-Shareef is that it is not permissible under Islamic Law for the ex-wife or the widow to use her husband's frozen sperm after his death or after divorce.

Position of Islamic Law on Surrogacy

Surrogate parenting involves a woman bearing the child of another woman who is not in a position to bear children as a result of her fallopian tube being blocked or her not having a uterus.⁸⁴ This procedure allows an infertile couple to have a child who would have the genetic complement of the husband, if the husband's sperm is used to fertilise the ovum of the surrogate woman.⁸⁵ But, here the major problem or objection from Islamic Law perspective is that fertilising the ovum of another woman by the sperm of a man not her husband is to be regarded as an adulterous union and is clearly wrong in Islamic Law.⁸⁶ It is not lawful to fertilise the sperm and ova of the spouses and plant in another woman's uterus who will deliver the resultant embryo for the spouses. It is also not allowed to obtain another man's sperm or another woman's ova and get it fertilised with the wife's ova or husband's sperm, as the case may be, and then plant the resultant embryo in the woman's uterus who will now deliver a baby for them.⁸⁷

In Islamic Law, contract of whatever nature must be lawful in its essence, content and nature. It must involve only things recognized as legal and of value by Islamic Law.⁸⁸ Therefore, in Islamic Law, surrogate parenting contract is essentially, completely and originally illegal and void. The contract which the surrogate mother and the married couple entered into will be considered an invalid contract under Islamic Law.⁸⁹ It is our humble view that this type of contract is invalid in the sense that, it is a contract which stipulates the sale of a free person and the body womb of the surrogate mother and it also involves an element of adulterous implantation of the fertilised egg of the wife in another woman's womb. Adultery or fornication leads to loss of genealogy against which Muslims have been warned not to even go near it. Allah says in *Sura Al-Isra*, thus: And go not near to *zina* (adultery or fornication) for it is shameful deed and an evil opening (the road to other evils).⁹⁰ Another reason for the prohibition of artificial reproduction with particular reference to surrogacy is the words of Allah in *Surah An-Noor*, which says: Enjoin the believing women to restrain their gaze and guard their private parts.⁹¹ Islamic Law justifies only the woman who has entered into the legal contract of marriage can be impregnated, carry pregnancy and give birth to children.⁹² Therefore, procreation is only allowed within a lawful marriage. In view of the above, surrogacy arrangement would not only destroy the very notion of family relations, but, it could also cause chaos to the determination of rights and responsibilities in Islamic Law.

Position of Islamic Law on Sperm Donation/Ova Bank

Sperm/ova donation for the purpose of undergoing artificial reproduction, no doubt, involves a third party's genetic material (sperm/ovum) by way of donation or outright sale as the case may be. It is a situation where the wife is artificially inseminated with the sperm of another man other than her husband - called a sperm donor or where she donates her egg (ovum) to a man other than her husband. Under Islamic Law, marriage is a contract between a woman and her husband and throughout the span of their matrimonial life, no third party should intrude into the marital functions of sex and procreation of a married couple. Therefore, a third donor is not allowed in reproduction, whether he or she is providing sperm, egg or embryo. This is the

⁸⁰ The Iddah is the customary waiting period under the Islamic Law usually 3 (three) months or 90 (ninety) days to ensure regular menstrual flow or no flow at all (depending on whether the woman has reached menopause or not) to ensure that the divorced woman does not leave her former matrimonial home with pregnancy from her former husband. See Abdulrasheed & Okoh (n 62) 55.

⁸¹ Abdulrazzaq A. Alaro (n 61) cited at <https://www.ncbi.nlm.nih.gov/books>. Also Yusuf Abdulrasheed and Sheriff E. Okoh, *Ibid*, 49, 50, 51 and 52.

⁸² Yusuf Abdulrasheed and Sheoriff E. Okoh, (n 62) 52.

⁸³ *Ibid*, 49.

⁸⁴ Ebrahim, A. M., 'Biomedical issues: Islamic Perspective' A. S. Noordeen, Kuala Lumpur, Malaysia, 1988, 112.

⁸⁵ Tsai, D.F.C: 'Ancient Chinese Medical Ethics and the Four Principles of Biomedical Ethics' *Journal of Medical Ethics*, 1999, 25:315.

⁸⁶ Yusuf Al-Qardaw; *The Lawful and the prohibited in Islam*, Al-Tauheed Publishing Company Ltd, Lagos, 1989, 28.

⁸⁷ I. A. Aliyu (n 33) 138.

⁸⁸ Yahaya Yunusa Bambale, *Islamic Law of Commercial and Industrial Transactions*, Malthouse Press Limited, Lagos 2007, 36. Also, Mansur I. Sa'id and Kabiru G. Muhammad, *An Introduction to Islamic Law of Contract*, Usman Danfodiyo University Press Limited, Sokoto, 2019, 37.

⁸⁹ Abu Hamid al-Ghazali, *Ihya' ulum al-Din*, Dar al-Marifah, vol. 2.

⁹⁰ Qur' an 17:32. See also Qur' an 24:2.

⁹¹ Qur' an 24:30-31.

⁹² This is clear from the prohibition of having sexual intercourse outside marriage and extra marital affairs from Qur' an 17:32 and 24:2.

position of jurists of all schools of Islamic Law.⁹³ Islamic Law establishes that, sperm emission could only occur in permissible sexual union with one's wife or slave.⁹⁴ So, the use of sperm of anyone other than that of the husband is clearly forbidden. A former head of the *Al-Azhar* University issued the following religious *fatwa* condemning the practice and equating it with an adulterous act thus:

Artificial insemination with the sperm of foreign person in the *Shariah*, a grievous crime and a great sin and is tantamount to adultery for their essence is the same and the result is also the same. For, it is the insertion of the sperm of a foreign person intentionally into a tilth which has not been legally tied to him through the bond of marriage. The legal verdict for artificial insemination in that way is the same as that of adultery which has been condemned and prohibited by the divine *Shariah*.⁹⁵

In condemning this practice, Yusuf Al-Qardawi also said:

Islam safeguards lineage by prohibiting *zina* (adultery and fornication)..Thus, keeping the family line unambiguously defined without any foreign element entering into it. It likewise prohibits what is known as artificial insemination if the donor of the sperm is other than the husband.⁹⁶

The import of the above statement is that sperm banks and ova banks are condemned by Islamic Law in view of the fact that using the sperm other than that of the husband to impregnate one's wife with it, is considered unlawful act.

Position of Islamic Law on Artificial Insemination

Artificial insemination is a process whereby semen specimen is taken from the husband and injected into the uterus of the wife. Sperm is usually obtained for this procedure by inserting the penis inside a special sheath (condom) prior to intercourse and by masturbation. Hanbali and Hanafi jurists permit masturbation in the event one fears that by not engaging in it, he will commit *zina*.⁹⁷ Contemporary jurists such as Abu Mushin, are of the view that permission for masturbation in this case could come from juristic principle: 'necessity renders, the forbidden permissible' based on the Quranic verse which says that: ' But whoever is compelled by necessity without willful disobedience nor transgressing due limits, surely, your Lord is forgiving, merciful.'⁹⁸ Abu Mushin further argued that, permitting it should not be on the basis of deriving pleasure, but, rather, to obtain fertility.⁹⁹ Musalam put forth the opinion of the Shafii jurists on the issue as follows:

Still others such as the strict Shafii jurist Nawawi, whose opinion is typical of Shafii, jurists as a whole said that masturbation was absolutely forbidden (Haram). But, then, we find that he as well as the other Shafii permitted masturbation when it was performed by the hand of man's wife..for he has a right to the enjoyment of her hand as he has to the rest of her body.¹⁰⁰

It is understood from the above that under Shafii school, masturbation is forbidden except if it is performed by the wife for her husband, then, it is permissible. Key or Major Findings In the course of this study, the following key/major findings have been observed as the main points of the Sunni Islamic position on medically assisted conception:

1. In-Vitro Fertilisation of an egg from the wife with the sperm of her husband followed by the transfer of the fertilised embryo(s) back to the uterus of the wife is allowed provided that the procedure is indicated for a medical reason and is carried out by an expert physician.
2. No third party should intrude into the marital functions of sex and procreation, because marriage is a contract between the wife and husband during the span of their marriage. This means that a third party donor is not allowed, whether he or she is providing sperm, eggs, embryos, or a uterus.
3. Adoption of a donor child from an illegitimate form of medically assisted conception is not allowed. The child who results from a forbidden method belongs to the mother who delivered him/her. He or she is considered to be a *laqit* or an illegitimate child.
4. If marriage comes to an end by reason of divorce or death of the husband, medically assisted conception cannot be performed on the ex-wife even if the sperm is that of the ex-husband.
5. An excess number of fertilised embryos can be preserved by cryopreservation. The frozen embryos are the property of the couple alone and may be transferred to the same wife in a successive cycle, but, only during the duration of the marriage contract.
6. All forms of surrogacy are forbidden.
7. Establishment of sperm or egg bank is strictly forbidden, for such a practice threatens the existence of the family and should be prevented.
8. The qualified physician is the only person to practice medically assisted conception in all its permitted varieties. If he performs any of the forbidden techniques, he is guilty and he must be stopped from his morally illicit practice.

⁹³ Resolutions of Islamic Fiqh Council, Makkah, *Journal of International Islamic Fiqh Academy*, vol. iii, part 1, 515 & 516, and the Fatwa of Sheikh Mahmud Shaltut, a former Head (Sheikh) of Al-Azhar, Cairo al; www.islamonline.com. Last visited on 20th January, 2022 at about 4.40 p.m..

⁹⁴ See Qur' an 70:30 and Qur' an 23:6.

⁹⁵ Shaltut, M. *Al-Fatwa*. Matbu' at al Idarat al Ammat li al-Thaqafah of al-Azhar, Cairo, 1959, 300 in Ebrahim, A.M. (n 84) 115.

⁹⁶ Yusuf Al-Qardawi, (n 89).

⁹⁷ Sa' ani, I. M., *Subulu Salam Sharhi Bulagul marami*, Maktabatil Islamiyya, Beirut, Lebanon, vol. 2, 1988, 59.

⁹⁸ Qur' an 6:145, 5:3.

⁹⁹ Abu Moshin, 'Biomedical Issue: Islamic Perspective', available at <https://www.ncbi.nlm.nih.gov/books> — accessed on 15th January, 2022 at 2.35 p.m.

¹⁰⁰ Ibid.

9. Artificial insemination with the husband's semen is allowed, and the resulting child is the legal offspring of the couple.

7. Conclusion and Recommendations

The paper has carefully discussed Assisted Reproductive Technology, its meaning, history and types. The paper has briefly explained the legal meaning and medical procedure of artificial insemination, in-vitro fertilization, sperm donor/ova bank, surrogacy, cryopreservation and use of preserved sperm. The paper further critically examined the legality or otherwise of Assisted Reproductive Technology such as in-vitro fertilization, third party assistance, artificial embryonation, surrogacy, sperm donation/ova bank and artificial insemination under Islamic Law. The paper carefully examined and analysed the arguments and *fatwa* of the scholars on the legality or otherwise of the Assisted Reproductive Technology under Islamic Law and it has been observed that in-vitro fertilization of an egg from the wife with the sperm of her husband followed by the transfer of the fertilised embryo(s) back to uterus of the wife is permissible under Islamic Law provided that the procedure was conducted by an expert physician. It has also been observed that in order to make the procedure acceptable under Islamic law, no third party should intrude into the marital functions of sex and procreation because marriage is a contract between the wife and husband. However, where the marriage has been terminated by reason of divorce or death of the husband, medically assisted conception cannot be performed on the ex-wife even if the sperm is that of ex-husband. It was unanimously agreed by the jurists that all forms of surrogacy are forbidden in Islam. It is hereby suggested that any couple who is suffering from infertility should first pray and make supplications, to Almighty Allah to ease the problem. If the problem persists, he or she should seek for medical intervention even if there is need to employ Assisted Reproductive Technology procedure which will only involve the taking of the wife's egg and fertilise it with husband's sperm with complete exclusion of third party. It is further suggested that the Supreme Council of Islamic Affairs in Nigeria should come up with a *fatwa* (Religious proclamation) permitting in-vitro fertilization between the same couple without participation of the third parties and condemning surrogacy, sperm donor/ova bank and artificial insemination between non-spouses. The paper recommended for the use of any type of ART apart from surrogacy, for the couple especially those who are genuinely suffering from infertility or one sickness or the other.