

## **Artificial Insemination: An Academic Analysis from the Perspectives of Sharia and Contemporary Medicine**

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Research Article

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**Abstract:** This scholarly article discusses the view of Islamic Sharia law pertaining to artificial insemination. Artificial insemination, as one of the contemporary medical issues, was not in existence in the era of Sharia jurists. It emerged in the last century as a result of scientific and medical developments; as its first successful experience in the field was performed in the UK in 1977 on the birth of a baby girl called Louise Brown. The practice later proliferated in other western countries, even surpassing its legitimate aim of treating infertile couples, as it began to entail businesses such as womb commodification, the establishment of sperm banks, and the like.

**Keywords:** *artificial insemination, Islamic jurisprudence, medical discovery, infertility, and treatment.*

### **Preface:**

To state the obvious, human reproduction is the means of survival of mankind race from extinction and annihilation; that is why, Islam has put a great deal of attention to family and best regulated it, namely through legal marriage and the rights and responsibilities associated with it. According to Islamic religious guidance, marriage, besides being a legitimate means of saturating instincts, leads to chastity, decency, health, and wellness; moreover, it establishes a link of closeness and bond between the individuals in the community. The fact above is mentioned in the Qur'an as following:

«And it is He who has created from water a human being and made him [a relative by] lineage and marriage. And ever is your Lord competent [concerning creation]» [Al-Furqan: 54]

Therefore, any sexual intercourse without marriage is considered rape, barbarism and illegal. In this case Allah Almighty says:

«And they who guard their private parts (5) Except their wives or those their right hands possess, for indeed, they will not be blamed (6) But whoever seeks beyond that, then those are the transgressors(7)» [Al-Muminun: 5-7]

From another aspect, Islam introduces treatment, regardless of whatever the disease is, not only as a human right but also as an important responsibility. Hence, as infertility is a disease that impedes birth and reproduction, its treatment is something legitimate; as it is stated in the Quran through the prayers of Zakaria (PBUH) and the story of Abraham. But for the cure and treatment of infertility as a disease, especially through artificial insemination, Islam has laid down rules that must be observed in its implementation as discussed in this article.

Although this practice is considered a contemporary scientific and medical discovery; but as noted in this article, Islamic jurisprudence with its dynamism and prosperity has already explored it and has regulated the provisions of parentage and waiting period (Edat) based on this practice under the term of "Istidkhal", as this case is the strongest proof for the competence of Islamic Sharia in any age and any time.

### **Artificial insemination From the Perspective of Sharia and Contemporary Medicine:**

#### *Definition of artificial insemination*

In modern terms, artificial insemination is the introduction of a male's sperm in the womb in order to achieve a pregnancy. [MajmoFatawa and Rasail, Usaimin, vol. 8, p. 251]

In other words, artificial insemination is the pregnancy of a woman without direct sexual intercourse between a man and a woman. [See Al-Fikrulislamiwal-Qazaya al-Tibbiya al-Moasirah, p. 190]. 5. + 6.

So, to summarize the definition of artificial insemination we can say that it is the process of depositing the male sperm in the womb or the acquisition of a man's sperm and a woman's egg cell to fertilize them in the test tube by a physician, and then transfer the embryo directly into the uterus. Artificial insemination is used usually when it is not possible to get pregnant through direct sexual intercourse.

#### **Jurisprudential literature review:**

The question that usually arises is that as artificial insemination is one of the contemporary medical discoveries, has it been mentioned in Islamic jurisprudence?

The answer is yes! It has been discussed in some Islamic jurisprudence books long before of its discovery in modern medicine, but with the difference that it is discussed in contemporary medicine for the sake of healing, while Islamic jurisprudence addresses it in its simplest form in the context of some family issues, such as the proving parentage and necessity of waiting period (Edat) and the like, which the jurists have called "Istidkhal". That is, in the case a woman puts her husband's sperm into her cervix without direct sexual intercourse and consequently, she conceives, will the parentage be proved or not? Regarding this issue, some jurisprudence books state as follows: "As intercourse (in the necessity of Edat), is the case of putting a man's respected sperm into her cervix." [Tuhfatul-habib, vol. 4, p. 389; al-Iqnaa fi Hall Alfazi AbiShujaa, vo. 2, p. 448].

That is, as it becomes obligatory for a woman to follow Edat on the part of intercourse, just as on the part of inserting the husband's semen, it is necessary to do so, provided that the semen is respected, thus, the husband should expel the sperm for his own wife, and the wife should insert it into her cervix. However, if the inserted semen is illegitimate the parentage would not be proved, and consequently, Edat will not be obligatory, as Al-Ramlie of Shafi'i jurisprudence puts it: "If the sperm is ejaculated via adultery then the woman inserts it into her cervix, then there is no need for Edat and the parentage is not proved." [Nihayatul-MuhtajElaaSharh al-Minhaj, vol. 7, p. 128]

That is, if the husband has ejaculated his sperm for the illegal purpose of adultery then his wife has inserted it into her cervix, there will no parentage proved for the husband nor an Edat is obliged on the wife.

From the above excerpts, we can say that in the case the sperm of husband is introduced to his wife's egg so she consequently conceives a child, the parentage and other relative provisions will be applied. Hence, for the legitimacy of parentage, it is of no need to be direct sexual intercourse between the wife and husband. The parentage can be proved via Istidkhal or artificial insemination with the condition that ejaculation and insertion of sperm should be legitimate.

At the same time, it can be said that Islamic jurisprudence can respond to all contemporary and modern cases.

### **Medical Literature Review:**

The first experience of artificial insemination in humans was carried out in the United Kingdom by two physicians, Patrick Steptoe and Robert Edwards, as a result, a baby girl named Louise Brown was born. The artificial insemination was conducted between a husband and wife by the introduction of the man's sperm with his wife's egg in the test tube and later putting them in the womb as it resulted in the pregnancy of the woman.

This news was broadcast to the world through the media and the news of the time, so the practice continued and there were hundreds of thousands of children born via this practice; but due to the lack of principles and regulations for this scientific, and medical discovery, it led to chaos. That is, artificial insemination went beyond the wedlock framework, as men and women who had no marital relationship began to use it to fertilize their illegitimate child. This practice even did not stop there either, but it led the issue of womb commoditization, causing intense controversy between its supporters and opponents in the west. This chaos reached to the extent that Dr. Edwards himself called for enacting laws to regulate the practice of artificial insemination.

Womb commoditization means that a person rents a woman's womb for a temporary period in return for an amount of money so he puts his sperm with the egg of his spouse in the rented womb for the purpose of childbirth if his wife's womb does not have the ability to fertilize. The fetus goes through the stages of development in the rented womb but upon giving birth, the child is supposed to be returned to the man and woman who had paid for the womb and who are the owners of the sperm and cell. In some cases, the issue comes to the point that the mother who gave birth avoids submitting the child and hence, the issue causes legal problems that have now engulfed Western societies, and they are struggling to find a way out.

Needless to say, the innovative practice of artificial insemination led to other medical approaches, including the following:

1. The conception of a child by a woman after the death of her husband from the sperm taken from him.
2. Donor's mother is a woman who provides her womb for developing other people's sperm and cell for free, and donor father is a man who bestows his sperm for others who need it to conceive their child.
3. Creation of sperm banks.
4. Embryo Freezing and the like. [Fiqhunnawzil, vol. 1, p. 259].

### **Factors of artificial insemination:**

Some of the factors that lead to artificial intercourse include:

1. Loss of the sperm due to excessive vaginal acidity.
2. Lack of coordination between the sperm and cell of the man and woman.
3. Cervical secretions that hamper the sperm from entering the cervix.
4. A man's inability to transfer the sperm into the cervix due to premature ejaculation or impotence.
5. If a man is diagnosed with cancer and becomes sterilized as a result of the use of drugs, chemotherapy, or radiation therapy, so his ejected sperm is kept until the appropriate time to be inserted into his wife's womb.[Fiqhunnawzil, vol. 1, p. 259].

### **Methods of artificial insemination:**

Artificial insemination is performed in two ways:

*Method One:* The internal method that has two modes.

- a) The Transfer of the husband's sperm by means of injection and so forth into the cervix, to introduce it with the wife's egg, and then fertilize, hence, the conception takes place in the womb as it occurs via ordinary intercourse. This method is usually done if the husband is unable to deliver his sperm to a suitable place in the uterus of his wife to become pregnant due to impotence.
- b) Obtaining a man's sperm and inserting it in the proper position of another person's wife, if the husband of the woman is infertile, meaning that there is no healthy seed in his semen. Hence, in this case, a healthy sperm of another man who has no marital relationship to the woman is taken and put in her womb.

*Method Two:* External insemination having the following forms:

- a) A doctor obtains the sperm of the husband and the egg of his wife and puts them in a test tube under specific physical conditions in order to achieve a cell called a zygote. When the zygote begins to divide and multiply the physician will insert it into the womb of the same woman who later goes through the stages of development and childbirth, and this baby is called the test tube baby. In addition, this is done when the woman is infertile due to a duct obstruction between the ovary and the uterus or for some other reasons.

b) Obtaining the sperm of the husband and the egg from the ovary of a woman who has no marital relationship to this man. This woman is referred to as "donor woman". Consequently, these sperm and egg will be introduced into the test tube and after fertilization, the zygote will be transferred to the womb of the man's wife. This is done if the ovary of the man's wife is damaged or has a problem so that it is unable to produce an egg but the woman's uterus is healthy.

c) Obtaining the sperm from another man and the egg from another woman who is not his wife then inserting it into the test tube and after the conception, transferring it to the womb of his wife.

This type is usually carried out if the woman is sterile due to inactivation of the ovary, obstruction or any other cause but her uterus is healthy but the man is completely sterile. Simply put, both husband and wife are infertile, so both sperm and egg are taken from another man and woman respectively, and after the fertilization, the fertilized cell will be inserted in the womb of this woman who is basically infertile. Here, the owners of the sperm and egg are referred to as "donors."

d) In this case, the sperm and egg of a husband and wife are fertilized within the test tube and then the fertilized cell is transferred in the womb of another woman who goes through the different stages of pregnancy until childbirth without any payment. This kind of insemination is usually done if the wife's womb is not capable of conception, but her ovary and egg are healthy or in the case, the woman does not want to become pregnant whether due to selfishness or arrogance so another woman accepts it voluntarily.

e) The woman who bears the sperm and egg of the husband and his wife in her womb is the second wife of the same man. It is noteworthy that this method is inconceivable in Western countries because in most Western societies polygamy is not allowed. [Al-Qazaya al-Fiqhiya al-Moasira wal-Iqtisadul-Islami, p. 792].

Above is a short overview of the methods of artificial insemination that are regarded to be contemporary scientific achievements.

It is noteworthy that, besides the fact that artificial insemination was first discovered for the treatment of infertility and was originally intended by the people for solely this purpose, over time, as human values began to be ignored and the moral deviation started to become widespread in Western societies, this medical practice is now widely carried out for other purposes including:

1. Commercial purposes such as renting a womb for money.
2. Buying the sperm in exchange for money.
3. Genetic engineering of the embryo or egg for manipulation and changes in the creation of a human being.
4. Motherhood of a woman without getting married.
5. Women who want to have a baby without pregnancy, motivated by themselves or by their husbands.

These factors have led to the establishment of sperm banks to maintain male sperms so that they can remain healthy for a long time and can be fertilized. The sperms are collected from specific or non-

specific individuals, whether a donation or in exchange for money, as in the West this has become an undeniable reality.

### **Sharia's opinion on artificial insemination:**

From the foregoing explanation, it has become obvious that there are various methods and forms for artificial insemination, so that of all the forms discussed, whether artificial insemination is internal or external, only one form is permissible but with the following conditions:

1. The artificial insemination should be between a husband and wife in their lives, that is, neither after the divorce nor the death of any one of them, since in these two cases there will be no marital relationship between them.
2. There should be no possibility of ordinary sexual intercourse between husband and wife.
3. All precautions should be taken, especially in the case of external insemination, so that the sperm and ovum of the couple are protected from the sperm and ovum of others.
4. Since the exposure of private parts of a Muslim woman is forbidden except in the case of urgent necessity in accordance with the rule of "necessity renders prohibited things permissible" and the rule of "necessity is determined by the extent thereof", hence, it should be avoided except within the scope of necessity.
5. If a female Muslim doctor is available, the treatment of the woman should neither be referred to a male Muslim doctor nor to a female non-Muslim doctor. Likewise, the treatment by a male Muslim doctor is permissible solely in the case there is no female doctor available, either Muslim or non-Muslim. Similarly, the treatment will be carried out by a male non-Muslim doctor if there is no access to a female doctor, whether she is Muslim or not, nor to a male Muslim one. [Al-Qazaya al-Fiqhiya al-Moasira wal-Iqtisadul-Islami, p. 790].

### **Reasons for the legitimacy of artificial insemination in this case:**

Infertility is a disease and the treatment of any kind of disease is legitimate. In the Holy Quran, there are numerous verses in this regard, that is, in the issue of disposing of infertility and asking that via prayer. Even some prophets have done it, especially the prayer of Zakaria (PBUH) as mentioned in the Quran:

«He said, "My Lord, indeed my bones have weakened, and my head was filled with white, and never have I been in my supplication to You, my Lord, unhappy(4). And indeed, I fear the successors after me, and my wife has been barren, so give me from Yourself an heir(5)» [Maryam: 4-5].

Likewise, is the case of Abraham (PBUH) and his wife, Sarah (PBUH); as the angels of Allah gave good tidings to the pair of their child while they were both in the stage of impotency and infertility, as astonished Sarah says according to Quran:

«She said, "Woe to me! Shall I give birth while I am an old woman and this, my husband, is an old man? Indeed, this is an amazing thing!"(72)» [Hud: 72]

The argument is clear that these noble prophets even at the stage of infertility had not given up hope to Allah Almighty and asked for a child, so every believer should have the belief that in fact, the bestower is Allah, and prayer or any medication is merely a means and an intermediary that is legitimate and even desirable.



Regarding the legitimacy of the overall treatment Prophet Mohammed (peace be upon him) has said, "There is no disease that Allah has created, except that He also has created its treatment." [Sahih al-Bukhari 5782]

Thus, there is no disease other than that there is a treatment.

After the above statement, it is obvious that there is no contradiction between the legitimacy of treatment of infertility and the Quranic verse that states: «And He renders whom He wills barren.» [Ash-Shura: 50]. Because, the verse implies the will and power of Allah, not the prohibition of treatment. Above is the treatment of the issue of artificial insemination between a man and a woman from a Sharia perspective. But in the case the donor woman is the second wife of the husband, as she bears the sperm of her husband fertilized with the ovum of the fellow wife in her womb, some scholars have considered it legitimate; as the criteria already discussed for artificial insemination between a husband and his wife, may be applied here, too. [MajmaFiqh Al-Islami, 8th assembly, Muslim World League, Makkah al-Mukarramah, January 19-28, 1985]

But after commenting on the legitimacy of the above case, there were some considerations that hampered the assembly from issuing permission on this case. Some of these considerations are as follows:

It is likely that the donor woman has become pregnant by the same husband before the insertion of zygote and womb obstruction so that if she gives birth to a (twin) child, it is difficult to determine which one is artificial and which is her own child?

It is still possible that one of the two embryos will be lost while still in the early stages of development while it is a clinging clot or a lump of flesh, so it will become ambiguous which one is lost and which one is left. This leads to a mix of consanguinity with the real mother and the non-real mother. Similarly, from a genetic perspective, the owner of the ovum is considered the mother of the child while regarding the issue of pregnancy and delivery, the donor woman is held to be the mother. As the Holy Quran states: «Their mothers are none but those who gave birth to them.» [Al-Mujadila: 2]

Therefore, this problem and contradiction encompass all forms of artificial insemination where the ovum comes from a woman other than the one who goes through pregnancy and childbirth. Al-Qazaya al-Fiqhiya al-Moasirawal-Iqtisadul-Islami

### **Sharia view on other forms of artificial insemination:**

With the exception of the two cases mentioned, one of which is absolutely permissible, and the latter was finally ruled illegitimate by MajmaFiqh Al-Islami just after the issue of a ruling on its legitimacy, all other forms of artificial insemination are prohibited on the following grounds:

1. The guidance of Allah Almighty in this regard as the Holy Quran states: «Their mothers are none but those who gave birth to them.» [Al-Mujadila: 2]
2. One of the basic rights of a human is the right to have legitimate parents; because if the father is ignored so the child solely attributed to the mother it means that the child is born out of adultery and at the same time he or she is deprived of the father. Moreover, if it is attributed to both the mother and the man who owns the sperm while he is neither the husband of the woman nor the legitimate father of the child, still the child will be deprived of the legitimate father.
3. Some of the negative effects related to artificial insemination are as follows:

a. As the husband is infertile and the child is born from another man's sperm, the husband will become conscience-stricken with psychological distress besides the feeling of inferiority, and possibly the internal zeal that can lead to suicide.

b. Regarding the condition of the wife, there will be an interest for her in knowing the man who is the owner of the sperm (biological father of the child), at the same time, she feels complex towards her infertile husband and there will be a feeling of growing insult and humiliation towards her. These problems and anxieties may cause the family to collapse.

c. In relation to the child, as the (biological) father is unknown, and no doubt there is a difference between the legal father and the biological father, and the child has no responsibility towards his legal father, nor he or she feels any paternal affection from him. Nevertheless, the surrounding condition forces him or her to respect the father unwittingly, for there is a complete disconnect between blood and the paternal relationship, there is no internal attraction and the dire consequences always threaten this trembling relationship, especially when the child becomes aware of the fact.

4. Since some donors may sufferer from dangerous and fatal diseases such as STDs, AIDS and the like, these diseases are undoubtedly transmitted to the donor woman, therefore, it can be said that artificial insemination can lead to the spread of diseases and this way, it may put the lives of donor women in danger.

5. Artificial insemination in the womb of animals is considered the greatest insult and humiliation of human dignity and at the same time, it causes an alteration in human creation, which is, in turn, an unforgivable sin. [Al-Qazaya al-Tibbiya al-Moasirah, pp. 89, 95; Al-FiqhulIslamiwaAdil-latuhi, vol. 7, pp. 500, 509]

6. In connection with the illicit forms of artificial fertilization, Sheikh Mahmoud Shalatot says: "Artificial insemination using the sperm other than the one from a legitimate husband is considered in Islamic Shariah to be a great and vicious crime that lies within a single framework, a single essence and a single result, namely illegal irrigation of a crop while there is no legal marital relationship between the farmer and the crop; hence if there was no shortage in the form of the crime (that is, the transfer of the illegitimate sperm to the illegitimate place by way of artificial insemination), it would have been considered an adultery which is forbidden in all heavenly religions punishable by Had." [Al-Fiqhul Islami wa Adil-latuhi]

7. Regarding this issue, Dar El-Ifta of Egypt states that: "The artificial insemination of woman's ovum with the sperm of a man while there is no marital relationship between them, as the zygote is transferred to the womb of the woman after fertilization process is conducted outside her womb is Haraam (forbidden) and enters within the concept of adultery." [Fatawa Dar El-Ifta of Egypt, March 23, 1980, vol. 2. p. 236]

## **Conclusion:**

The results achieved through this article are as follows:

1. Artificial insemination, besides being a contemporary medical issue that has emerged as a result of scientific advancements and discoveries, has undoubtedly been treated in Islamic jurisprudence from another perspective.



2. The overriding purpose of this phenomenon has been to cure and treat infertility and impotence, but in the West, in the absence of regulations for ethical values, it caused controversy and chaos as it began to be used for purposes other than treatment.
3. Islamic Shariah has a clear stance on this phenomenon. It has legitimized the treatment of infertility. Moreover, despite the variety of methods and forms of artificial insemination, only one form of that which is between a husband and his wife is permissible under specific terms and conditions; hence, all other forms and methods are against the spirit of Sharia and therefore forbidden.
4. What is noteworthy for the Muslims of the world, especially the Muslims of my dear Afghanistan, is that they should be cautious when they resort to artificial insemination, lest they commit an illegitimate act, thus prior to take any action in this regard, they should refer to their scholars to see if it is in compliance with Sharia ruling of the matter.

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