

LEGAL AND ETHICAL FRAMEWORK OF ISLAMIC LAW ON THE CONTEMPORARY ASSISTED REPRODUCTIVE TECHNOLOGY

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Abstract

The act of reproduction is a fundamental aspect of human existence shared universally among people regardless of religious, cultural, or social backgrounds. Childlessness is frequently stigmatized globally and can result into significant social distress for couples and especially the woman folk. In response to infertility, many individuals seek assistance through scientific methods, especially in developing nations where such resources may be limited. The use of scientific means to enhance fertility is a contemporary topical issue that cannot be overemphasized. According to the European Society for Human Reproduction and Embryology, more than eight million babies have been born through the Artificial Reproductive Technology (ART) worldwide in the last 30 years. Islam acknowledges infertility as a challenge and permits seeking lawful remedies in accordance with the Islamic principles. This paper explores the various options available to couples seeking assisted reproduction and delves into the Islamic viewpoint on different Assisted Reproductive Technologies (ART), aiming to discern the permissibility and limits of these technologies under Islamic law. This study employs a doctrinal research method with reliance on the existing literature and analysis of the Holy Qur'an and Sunnah. The paper recommends that before pursuing ART, Muslim couples should seek knowledge of Islamic law to determine which methods align with the Islamic principles and values. The paper concludes that ART is permissible and encouraged; but only within the context of a valid marriage between a husband and wife; and solely during the duration of their marital contract within the context of Islamic legal framework and ethics.

Keywords: Assisted Reproductive Technology, Infertility, Islamic Law, Reproduction.

1.0 INTRODUCTION

Islam offers a comprehensive and all-encompassing way of life, guiding both spiritual and worldly matters. As Allah states in the Qur'an, “...*We have left nothing out of the Book...*”¹ implying

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that the divine guidance is complete and thorough. This concept is further reinforced by the Prophet's (SAW) hadith, which declares, "*Seek medical treatment, for Allah has not created a disease without creating a remedy for it, except for one thing – old age*"² (Bukhari). This hadith encourages humanity to seek remedies for their ailments, emphasizing that Allah has provided guidance and solutions for every affliction, and it is an individual responsibility to seek them out. In implementing this principle, Islamic law provides a multi-faceted approach to healthcare.³

Firstly, Muslims are encouraged to invoke spiritual healing through prayer (*du'a*), recitation of the Quran, and seeking blessings from righteous individuals. Secondly, they are obligated to seek medical treatment from qualified professionals, as emphasized in the Hadith, seek medical treatment. Furthermore, Islamic law permits using natural remedies and holistic approaches, such as herbal medicine (*tibb nabawi*) and spiritual therapies, provided they do not contravene the principles of Islamic Law. Ultimately, the Islamic paradigm of healthcare underscores the importance of integrating spiritual, physical, and emotional well-being in the pursuit of holistic health.⁴

The emphasis on seeking medical treatment and a cure for ailments also extends to the realm of reproductive health. "Reproductive health according to the World Health Organization (WHO) is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity, in all matters relating to the reproductive system and to its functions and processes." In the context of assisted reproductive technologies (ART), Islamic law provides guidance on the permissibility of various treatments, such as in vitro fertilization (IVF), egg and sperm donation, and surrogacy. While ART can provide a means of alleviating the suffering of infertility, Islamic law prioritizes the protection of family ties, the preservation of lineage, and the prevention of harm. Therefore, Islamic jurists and scholars have developed guidelines for the permissible use of ART,

¹ Qur'an 6:38

² IA Al-jauziyyah, '*Healing with the Medicine of the prophet*'. (Darussalam 2010) 27

³ NSB Sellamat, '*The Model of Ijtihad in Fatwas Related to Health Care in Singapore*'. (PhD Dissertation.

Universitas Muhammadiyah Malang, 2024). Accessed

<https://eprints.umm.ac.id/id/eprint/7508/1/Final%20Thesis%202023%20Submission_Nenny%20Suzanah_Model%20of%20Ijtihad%20in%20Fatwas%20related%20to%20Health%20Care%20in%20Singapo.pdf> accessed 28

February, 2025

⁴ D Terblanche, and S Abrahams. '*Integrating Maqāsid al-Sharī'ah into Islamic Psychology: Towards a Holistic Approach to Mental Health and Well-Being*.' *Al-Wasatiyyah* 3 (3) (2024) 114-149.

emphasizing the importance of informed consent, the protection of marital relationships, and the avoidance of procedures that may lead to harm or exploitation.

Assisted Reproductive Technology (ART) literally is any scientific method or procedure that helps with having children.⁵ According to the World Health Organization (WHO), ART is defined as "any medical treatment or procedure aimed at helping individuals or couples conceive and have a child, it includes techniques such as In Vitro Fertilization (IVF), Intracytoplasmic Sperm Injection (ICSI), Gamete Intrafallopian Transfer (GIFT), Zygote Intrafallopian Transfer (ZIFT), Egg and Sperm Donation, Surrogacy, and Artificial Insemination (AI).⁶ Dr. Edwards, an embryologist and Dr. Steptoe, a gynaecologist 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.⁷ Since then, countless assisted reproductive techniques have surfaced, further refining and superseding earlier technologies.

Since the introduction of IVF-ET technology, over 8 million babies have been born worldwide as of 2022.⁸ The probability of a successful pregnancy depends on various factors, including the age and reproductive health of both partners. Although reported success rates from ART programs can be confusing and misleading, the probability of a successful outcome has significantly improved, ranging from 30% to 70% at ART centres worldwide, depending on individual circumstances.⁹

An emerging technology that has the potential to revolutionize the field of ART is Artificial Womb, which is still in its infancy, but it has the potential to transform the way we approach reproductive medicine and ART. Artificial Womb, also known as Ectogenesis, refers to the artificial incubation of a foetus outside the human body, using a machine or device that simulates the conditions of a

⁵ KA Hamzat-Umar, 'An Appraisal of the Islamic Perspective of Assisted Reproductive Technology'. (LLM Dissertation, Faculty of Law University of Ilorin 2015)

⁶ World Health Organization, 'Assisted Reproductive Technology (ART)' (2020).

⁷ MN Nordin, 'An Islamic Perspective of Assisted Reproductive Technologies'. *Bangladesh Journal of Medical Science*, (2012) 11 (4), 252.

⁸ European Society of Human Reproduction and Embryology (ESHRE). ART Fact Sheet (2022).

⁹ American Society for Reproductive Medicine (ASRM), 'Assisted Reproductive Technologies (ART) Success Rates' (2022).

natural womb.¹⁰ The new era of ART is indeed tilting towards Artificial Womb, as researchers and scientists are exploring the possibilities of using Artificial Womb to improve pregnancy outcomes, reduce the risk of complications, and provide new options for individuals and couples struggling with infertility.

Islam acknowledges that infertility is a significant hardship. The pursuit by barren spouses of a remedy to infertility should, therefore, not be seen as a revolution against the fate decreed by God. Nevertheless, for the Islamic Law's tolerance not to be misconstrued as *carte blanche* for indiscriminate adoption of any method or technique, there is a pressing need to assess certain processes involved in Assisted Reproductive Technology (ART) which often raise questions bordering essentially on moral, ethical, and legal issues. The paper seeks to address the ethical and legal implications of ART from an Islamic perspective, providing guidance for Muslim couples, healthcare providers, and policymakers on the acceptable use of these technologies within the bounds of Islamic law and ethics.

2.0 CONCEPTUAL CLARIFICATION

In addressing the legal and ethical framework of Islamic law on contemporary Assisted Reproductive Technology (ART), it is essential to begin with a clear understanding of key terms and concepts that form the basis of this study. It lays the foundation for evaluating emerging technologies not only through classical *fiqh* principles but also through *ijtihad* (independent juristic reasoning), ensuring that rulings remain relevant and rooted in the timeless objectives of the Shariah.¹¹ These include Assisted Reproductive Technology (ART) itself and related concepts such as infertility, lineage (*nasab*), and *maqāṣid al-sharī'ah* (objectives of Islamic law), all of which bear legal and ethical implications in Islamic jurisprudence.

Assisted Reproductive Technology (ART) refers to a range of medical procedures used to address infertility by aiding the process of conception. The most widely known forms of ART include in vitro fertilization (IVF), intracytoplasmic sperm injection (ICSI), cryopreservation (freezing of gametes or embryos), gamete donation, embryo transfer, and more recently, artificial womb

¹⁰ F Simonstein, 'Artificial Reproduction Technologies (RTs): All the way to the Artificial womb?' *Medicine, health care and philosophy*, (2006) 9, 359-365

¹¹ MH Kamali, 'Principles of Islamic Jurisprudence'. Cambridge Islamic Texts Society *Journal of Law and Religion* 15 (2001) 385-387.

technology (AWT) and uterine transplants. ART can be performed using the couple's own gametes or with the assistance of third-party donors and surrogates, which is where significant legal and ethical concerns emerge under Islamic law.¹²

Infertility, often the reason for resorting to ART, is medically defined as the inability to conceive after 12 months of regular unprotected sexual intercourse. In Islamic jurisprudence, while procreation is highly encouraged and viewed as a primary purpose of marriage (Qur'an 16:72), infertility is not considered a moral failing. Islam permits medical intervention to treat infertility provided it does not contravene established legal and ethical boundaries.¹³

A central concept in Islamic bioethics related to ART is *nasab* (lineage). Islamic law places a high premium on preserving the integrity of lineage, which is closely tied to issues of inheritance, identity, and family structure. Any ART method that introduces a third party's genetic material (e.g., sperm or egg donation, or surrogacy) risks confusion in *nasab* and is generally considered impermissible (*ḥarām*).¹⁴

Further, the Islamic legal framework is guided by the *maqāṣid al-sharī'ah*, the higher objectives of Islamic law, which include the preservation of religion (*dīn*), life (*nafs*), intellect ('*aql*), lineage (*nasab*), and property (*māl*). ART procedures are ethically evaluated in light of these objectives. For instance, preserving lineage and protecting human dignity are key reasons behind the prohibition of donor-assisted reproduction and surrogacy in Islamic law, whereas procedures that use the couple's own gametes within marriage may be allowed under the principles of *maslahah* (public interest) and *darūrah* (necessity).¹⁵

Moreover, contemporary technologies such as artificial wombs which propose the external gestation of human embryos introduce new terminologies and dilemmas that require fresh jurisprudential scrutiny. While they may present solutions to medical infertility or maternal risk,

¹² M Ghaly, 'Human Embryology in the Islamic Tradition: An Annotated Translation of al-Ghazālī's Chapter on Embryology'. *Islamic Bioethics: Current Issues and Challenges*, 3–18 (2010).

¹³ A Sachedina, *Islamic Biomedical Ethics: Principles and Application*. Oxford University Press (2009).

¹⁴ V Rispler-Chaim, 'Islamic Medical Ethics in the Twentieth Century'. Brill (1993). Accessed <[https://books.google.com.ng/books?hl=en&lr=&id=QjlkB1UiXIIC&oi=fnd&pg=PP13&dq=Rispler-Chaim,+V.+\(1993\).+Islamic+Medical+Ethics+in+the+Twentieth+Century.+Brill&ots=j7uUqHcmMB&sig=kgS6x_H5jtWvBRSrTazGyPUdKJk&redir_esc=y#v=onepage&q=Rispler-Chaim%2C%20V.%20\(1993\).%20Islamic%20Medical%20Ethics%20in%20the%20Twentieth%20Century.%20Brill&f=false](https://books.google.com.ng/books?hl=en&lr=&id=QjlkB1UiXIIC&oi=fnd&pg=PP13&dq=Rispler-Chaim,+V.+(1993).+Islamic+Medical+Ethics+in+the+Twentieth+Century.+Brill&ots=j7uUqHcmMB&sig=kgS6x_H5jtWvBRSrTazGyPUdKJk&redir_esc=y#v=onepage&q=Rispler-Chaim%2C%20V.%20(1993).%20Islamic%20Medical%20Ethics%20in%20the%20Twentieth%20Century.%20Brill&f=false)> accessed 18 May, 2025

¹⁵ MA Al-Bar, and H Chamsi-Pasha, 'Contemporary Bioethics: Islamic Perspective'. Springer, pp. 157–175 (2015).

they also raise complex questions regarding the definition of motherhood, the status of gestation outside the womb, and the moment of ensoulment, all of which have both theological and legal dimensions in Islam.¹⁶

3.0 ISLAMIC PRINCIPLES AND VALUES

The concept of family is deeply rooted in Islam, and its importance is evident from the very beginning of creation. The story of Prophet Adam (peace be upon him) and his wife Nana Hawwa (Eve) serves as a prime example. The Qur'an describes them as the first human beings created by Allah, and their relationship as the foundation of the first family (Quran 2:35-37).

A family typically consists of a father, a mother, and their children living together as a unit. The family unit is considered a sacred institution in Islam, it is not merely a social construct but a divine framework that nurtures love, compassion, and stability. The family unit serves as a sanctuary of support, guidance, and spiritual growth for individuals, and its members are encouraged to maintain strong bonds with one another.¹⁷ The Quran emphasizes the importance of family ties, stating, "And We have enjoined upon man [care] for his parents. His mother carried him, [increasing her] weakness upon weakness, and his weaning is in two years. Be grateful to Me and to your parents; to Me is your return."¹⁸ The primary purpose of a family in Islam is to worship Allah and follow His commandments. The family is seen as a means of supporting one another in this endeavour, with each member playing a vital role. The father is responsible for providing for and protecting his family, while the mother is entrusted with nurturing and caring for the children (Qur'an 4:34).

Children, in turn, are encouraged to show respect and gratitude towards their parents, particularly their mothers, who are often described as the epitome of selflessness and compassion (Qur'an 2:233). Prophet Muhammad (peace be upon him) emphasized the significance of family ties,

¹⁶ AFM Ebrahim, *Islamic Ethics and the Implications of Modern Biomedical Technology: An analysis of some issues pertaining to reproductive control, biotechnical parenting and abortion*. Temple University, 40(2), 193–212 (1986). <<https://www.proquest.com/pq1academic/docview/303434186?fromopenview=true&pq-origsite=gscholar&sourcetype=Dissertations%20&%20Theses>> accessed 18 May, 2025

¹⁷ KUI Huda, *The family in Islam: A pillar of strength and unity* (2024) <<https://www.islamicity.org/101697/the-family-in-islam-a-pillar-of-strength-and-unity/>> accessed 19 March, 2025

¹⁸ Qur'an 31:14

saying, "The best of you is the one who is best to his family, and I am the best among you to my family." (*Tirmidhi*)

The belief of most Muslims is that Allah has predestined the number and fate of children for each couple, as stated in the Quran: "And Allah has extracted you from the wombs of your mothers not knowing a thing, and He gave you hearing, sight, and intellect that you may be grateful."¹⁹ Prophet Muhammad (peace be upon him) encouraged marriage and procreation, saying: "Marry and multiply, for I will be proud of you among the nations on the Day of Resurrection." (*Abu Dawud*) Newlywed couples often pray for children, recognizing the importance of family and the value of raising righteous offspring. The Quran emphasizes the significance of parenting, stating: "O you who believe! Save yourselves and your families from a Fire whose fuel is men and stones."²⁰ As explained by Yusuf Ali, this verse emphasizes the importance of vigilantly protecting not only one's own actions but also those of loved ones. This concept is beautifully complemented by Qur'an 25:74, "Our Lord, grant us from among our wives and offspring comfort to our eyes and make us an example for the righteous." where believers pray for righteous family members who bring comfort and joy, serving as a source of spiritual fulfilment. By doing so, individuals become exemplary models of righteousness, ensuring the continuation of Allah's guidance through their wives, children, and descendants. Raising righteous children is considered a great reward, as they will be a source of benefit to society shaping the next generation of believers. Prophet (peace be upon him) said: "A righteous child is a flower from the flowers of Paradise." (*Tirmidhi*)

Scientifically, it's a fact that not all couples can procreate naturally due to various health issues affecting either the husband or wife. This is where infertility comes into play, and thanks to the knowledge and wisdom bestowed upon humans by Allah, avenues for addressing infertility have emerged. Allah encourages us to seek cures for our ailments, and this is evident in the Quranic verse: "And if Allah touches you with affliction, none can remove it but He, and if He touches you with good, He is Able to do all things."²¹

¹⁹ Qur'an 16:78

²⁰ Qur'an 66:6

²¹ Qur'an 6:17

Assisted Reproductive Technology (ART) is one such avenue that has been made possible through scientific advancements and the blessings of Allah. These technologies have brought hope to countless couples struggling with infertility, allowing them to build their families and experience the joy of parenthood. It's essential to recognize that these advancements are a manifestation of Allah's guidance and provision for humanity, as stated in the Quran: "And We sent down the Book and the Wisdom and the Prophethood to you and provided you with good things."²²

As Muslims, we are obligated to follow Allah's commandments and adhere to the principles of *halal* (permissible) and *haram* (non-permissible) in all aspects of life, including seeking solutions to our health problems. In the context of Assisted Reproductive Technology (ART), Islamic Law has guidelines that dictate what is permissible and what is not. While seeking medical help for infertility is encouraged, not all ART methods are considered *halal*.

Islamic scholars and medical professionals have deliberated on these issues, and guidelines vary among different schools of thought. However, the underlying principle is to prioritize the sanctity of marriage, the integrity of the family, and the welfare of all parties involved. Allah has commanded us to seek knowledge and medical help when needed, but also to adhere to His guidelines and ethical boundaries. As the Quran says: "*And eat of the good things We have provided for you and be grateful to Allah if it is Him you worship.*"²³

4.0 ISLAMIC LEGAL FRAMEWORK FOR ART

The treatment of fertility issues has undergone a significant transformation with the advent of Assisted Reproductive Technologies (ARTs).²⁴ Previously, medications and surgery were used to address hormonal deficiencies and anatomical defects, respectively, which were largely uncontroversial from an ethical and religious standpoint.²⁵ However, ARTs have dramatically altered this landscape, shifting the procreative process from a private, personal relationship

²² Qur'an 5:110

²³ Qur'an 16:114

²⁴ MA Khan, JC Konje, 'Ethical and Religious Dilemmas of Modern Reproductive Choices and the Islamic Perspective'. *European Journal of Obstetrics & Gynecology and Reproductive Biology*, (2019) 232, 5-9

²⁵ American Society for Reproductive Medicine. 'Optimizing Natural Fertility: A Committee Opinion'. <https://www.asrm.org/practice-guidance/practice-committee-documents/optimizing-natural-fertility-a-committee-opinion-2021/> accessed on 22 May, 2024

between husband and wife to an artificial, laboratory-based process often involving third or fourth parties.²⁶ This shift has raised complex ethical and religious concerns, challenged basic concepts and sparking debates among religious scholars, ethicists, and medical professionals.²⁷

The primary sources of Islamic law are the Qur'an and Hadith (the sayings and traditions of Prophet Muhammad (SAW)). The secondary sources also known as *Ijtihād* (legal reasoning) include: Qiyas (analogical reasoning), *Istihsan* (Juristic preference), *Maslaha Mursalah* (unrestricted public interest), *Sadd al-Dharai* (blocking the means), 'adat and 'urf (customary practice) and *Istishab* (presumption of continuity).²⁸ The secondary sources are resorted to when there is no legal provision in the primary sources taking into account the *Maqasid al-sharī'ah* (the objective of Islamic law) i.e. the preservation of religion, life, intellect, wealth, and progeny.²⁹ It is a known fact that the Qur'an and Sunnah do not explicitly address modern reproductive technologies such as in vitro fertilization (IVF), surrogacy, sperm or egg donation, and embryo freezing. Given that these advancements were not present during the time of revelation, Islamic scholars rely on secondary sources to derive rulings that align with the principles of Shariah while addressing contemporary ethical and legal challenges. The most relevant secondary sources in the context of assisted reproductive technology (ART) include *Istihsan* (juristic preference), *Sadd al-Dharai* (blocking the means), and *Maslahah Mursalah* (public interest), as they provide essential jurisprudential tools for navigating ethical and legal dilemmas in ART. *Istihsan* allows for flexibility in permitting procedures like in vitro fertilization (IVF) within marriage when strict analogical reasoning might otherwise prohibit them, while *Sadd al-Dharai* serves to prevent potential harm by restricting third-party involvement, such as sperm or egg donation, to safeguard lineage and family integrity. Meanwhile, *Maslahah Mursalah* justifies ART advancements that fulfill legitimate social and personal needs, such as addressing infertility, if they align with Islamic ethical principles.

²⁶ M Saniei, and M Kargar, 'Modern Assisted Reproductive Technologies and Bioethics in the Islamic Context'. *Theology and Science*, (2021) 19(2), 146-154

²⁷ HE Fadel, 'Assisted Reproductive Technologies. An Islamic Perspective'. FIMA Yearbook. Islamabad, Pakistan: Federation of Islamic Medical Associations and Medico Islamic Research Council, (2002) 59-68.

²⁸ MH Kamali, 'Principles of Islamic Jurisprudence'. Cambridge Islamic Texts Society *Journal of Law and Religion* 15 (2001) 385-387.

²⁹ HE Fadel, (2007) *Preimplantation genetic diagnosis: Rationale and ethics, an Islamic perspective*. *Islamic Med. Assoc North Am*, 39, 150-157.

ART has consistently revolved around the use of donor sperm, egg, and ovum, and the question of its permissibility merits *Ijtihād* (legal reasoning). On one hand, Islam has always encouraged men to contemplate, explore new horizons, and make use of all things Allah has created for them (Qur'an 2:29, 13:11, 16:14). The Prophet (peace be upon him) also encouraged all to seek a cure for diseases (*Bukhari*). However, the introduction of donor sperm, egg, and ovum not only blurs the line of descendants but also disrupts the purity of lineage. Lineage is a highly protected aspect in Islam, as seen in the provision of the Qur'an which says: "*it is He who has created man from water: then has He established relationships of lineage and marriage: for thy Lord has power (over all things).*"³⁰ This verse highlights Allah's creation of humanity from water and the diversity of human populations, emphasizing the importance of mutual understanding and cooperation among people of different ethnic, linguistic, and cultural backgrounds.

The concern about unclear lineage in the context of (ART) is that it may lead to unintended consanguineous relationships or incestuous marriages even with the strict provisions to prevent it from happening.³¹ Consanguineous relationships refer to marriages between individuals who are related by blood, such as siblings, cousins, or other close relatives. In Islam, marrying close relatives is strictly prohibited³² due to the potential genetic risks and the importance of maintaining clear family lines. However, with the use of donor sperm, eggs, or embryos, the biological relationship between parents and children may not be immediately apparent. This raises concerns that individuals may unknowingly marry a close relative, such as a sibling or cousin, which could lead to genetic disorders, family dynamics, or legal and social issues.³³

To mitigate these risks, strict guidelines and regulations are essential to ensure that individuals using ART are aware of their genetic relationships and can make informed decisions about their reproductive choices. Therefore, to address infertility while adhering to Islamic law, the only

³⁰ Qur'an 25:54

³¹ HE Fadel, 'The Islamic viewpoint on new Assisted Reproductive Technologies'. *Fordham Urb L J*, (2002) 30, 147. <https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=1851&context=ulj> accessed 22 May 2024.

³² Qur'an 4:22-23, 24:26

³³ MA Al-Bar, and H Chamsi-Pasha, 'Assisted Reproductive Technology: Islamic Perspective'. *Contemporary Bioethics: Islamic Perspective* (2015) 173-186

permissible option is to use the husband's sperm and the wife's ovum, ensuring that the reproductive process remains within the marital bond and maintains the integrity of the family unit.³⁴ This approach also aligns with the Islamic principle of "avoiding harm" (*darar*), as it prevents potential harm to the family structure, lineage, and individual dignity. Islamic law has a subtle distinct view on Assisted Reproductive Technologies (ART), considering each method individually. Here's a brief overview of some of the methods.

In Vitro Fertilization (IVF) with its various modifications, i.e. GIFT (Gamete intra-fallopian transfer), ICSI (Intracytoplasmic sperm injection) using husband's sperm and wife's egg has been declared Islamically permissible, as it maintains the marital bond within the context of a valid marriage and doesn't involve third-party intervention. It is also permissible to freeze the remaining fertilized ova if they are used for the same married couple.

Artificial Insemination (AI), particularly Intrauterine Insemination (IUI) using the husband's sperm, is permissible in Islamic law³⁵, provided it occurs within the bounds of a valid and ongoing marital relationship. The procedure involves only the gametes of the married couple and maintains the biological and legal integrity of lineage (*nasab*). However, its permissibility is conditional: the insemination must take place while the marital bond is intact. Therefore, using the husband's frozen semen after his death or following a divorce is not allowed³⁶, as the reproductive act would fall outside the framework of a valid marriage, thus violating Islamic legal and ethical principles.

Surrogacy is impermissible in Islamic law³⁷, as it involves a third party carrying the fetus, which compromises the sanctity of marriage and leads to potential confusion in lineage (*nasab*) and family ties. This practice introduces an outsider into the exclusive reproductive domain of the marital relationship, violating the Islamic framework of procreation. The Qur'an states, "*None can*

³⁴ M Iqbal, 'Access to Assisted Human Reproductive Technologies in the Light of Islamic Ethics' (Doctoral Dissertation, UCL University College London (2012)).

³⁵ MTA Seyyed, 'Islamic Jurisprudence and Artificial Insemination'. *Medicine in Islamic culture: Islamic Medical Jurisprudence Part II: The Responses of Islamic Law to Medical Dilemmas*. (2012)

³⁶ Islamic Medical Ethics: The Imana Perspective. (2005). *Journal of the Islamic Medical Association of North America (JIMA)* Vol. 12, No 4.

³⁷ Surrogacy: Islamic principles on family planning. Qasim publications. Pg 150-153
<http://www.beautifulislam.net/family/surrogacy.htm> accessed on 22nd May, 2024.

be their mothers except those who gave birth to them...” (Qur’an 58:2), affirming the significance of biological motherhood and the natural maternal bond. Surrogacy disrupts this divine order and is viewed as contrary to the will and design of Allah in human reproduction³⁸. Moreover, scholars agree that if surrogacy is undertaken despite its prohibition, the birth mother is legally recognized as the real mother, reinforcing the importance of gestation in establishing maternal identity in Islamic jurisprudence.

Donor sperm or egg is categorically prohibited in Islamic law, as it introduces genetic material from a third party outside the marital bond, thereby compromising the sanctity of marriage and violating the principle of lineage (*nasab*) preservation—an essential objective of *maqāṣid al-sharī‘ah*. The Qur’an emphasizes the importance of clear lineage: *“Call them by [the names of] their fathers. It is more just in the sight of Allah...”* (Qur’an 33:5). Such third-party involvement raises profound ethical and legal concerns, including inheritance disputes, identity ambiguity, and the risk of future incest due to donor anonymity. Jurists have likened this to *zinā* in its effect on lineage, even if physical adultery is absent.³⁹ Hence, all major Islamic schools unanimously forbid the use of donor gametes, permitting only the husband and wife to contribute genetic material within a valid marriage.

Embryo donation is impermissible in Islamic law, as it involves the transfer of a fertilized embryo created from the sperm and egg of another couple into the uterus of a woman who is not the genetic mother. This practice introduces multiple third parties, thereby intensifying the concerns associated with gamete donation, particularly the violation of the Islamic imperative to preserve lineage (*nasab*). It creates legal and ethical confusion regarding parentage, custody, inheritance, and filial obligations, contravening the Islamic principle that procreation must occur solely between spouses within a valid marriage. Additionally, embryo donation has been rejected by classical and contemporary jurists based on *sadd al-dharā’i‘* (blocking the means), due to its potential to cause lineage ambiguity, commodification of reproduction, and systemic abuse. Thus, even when

³⁸ Ibid

³⁹ A. Sachedina, *Islamic Biomedical Ethics: Principles and Application*. Oxford University Press (2009).

pursued for altruistic purposes, embryo donation remains prohibited across all major Islamic legal schools.

Pre-implantation Genetic Diagnosis (PGD) is considered permissible in Islamic law when used for medical purposes, such as detecting severe or life-threatening genetic disorders prior to embryo implantation during IVF. This aligns with the Islamic legal maxim *al-darar yuzāl* ("harm must be eliminated") and supports the *maqāṣid al-sharī'ah* objectives of preserving life (*nafs*) and intellect (*'aql*). Islamic scholars and institutions, including Al-Azhar and the Islamic Organization for Medical Sciences (IOMS), have conditionally endorsed PGD⁴⁰, provided that it involves the gametes of a lawfully married couple, does not result in unjustified destruction of embryos, and is not used for non-medical sex selection or enhancement of traits. While PGD offers significant benefits in preventing suffering and protecting future generations, its misuse for cosmetic or gender preferences remains ethically problematic under Islamic law.

Gamete Intrafallopian Transfer (GIFT) is deemed permissible in Islamic law as it involves the placement of the husband's sperm and wife's egg into the wife's fallopian tube for natural fertilization, without involving third parties or external fertilization. This procedure maintains the sanctity of marriage, ensures lineage (*nasab*) clarity, and aligns with the Islamic requirement that procreation occurs exclusively within a valid marital relationship. Since GIFT closely mimics natural conception and upholds both ethical and legal principles in Islamic jurisprudence, many contemporary Muslim jurists classify it as a legally sound method of treating infertility, provided it is performed while the marital bond remains intact.

Zygote Intrafallopian Transfer (ZIFT) is a form of assisted reproduction in which the egg is fertilized with the husband's sperm outside the body and the resulting zygote is transferred into the wife's fallopian tube. In Islamic law, ZIFT is permissible under specific conditions: the gametes must originate exclusively from a lawfully married couple, the transfer must occur while the marriage is intact, and no third-party involvement is allowed. Although fertilization takes place in

⁴⁰ Islamic Organization for Medical Sciences (IOMS) (1996). *Reproductive Health and Islamic Ethics*. IOMS, Kuwait.

vitro, the procedure is accepted by scholars as it preserves lineage integrity and upholds the ethical parameters of *Shari'ah*. ZIFT also aligns with the Islamic principle of *taysīr* (facilitation) in addressing infertility, so long as it remains within the bounds of lawful medical intervention.

5.0 ETHICAL CONSIDERATION IN ART

As previously discussed, ART has revolutionized the field of reproductive medicine, offering hope to individuals and couples struggling with infertility. However, it also raises important ethical considerations. The use of ART raises ethical concerns related to the welfare of the resulting children, the potential for exploitation of vulnerable individuals, and the possibility of unintended consequences.⁴¹ Ethics is sometimes thought to be merely a matter of individual preference or cultural convention. Although ethical judgements may indeed express personal preferences and may be connected in complicated ways with cultural conventions, ethics itself is a form of rational inquiry that concerns how we should live and what we should do. Some ethical issues are matters of debate: people of goodwill can reason about them but still reach differing conclusions.⁴²

The advances in reproductive biology that have made it possible to produce human pre-embryo in vitro have been among the most significant scientific achievements of the past years. Society's views on the new techniques were divided between pride in the technological achievement, pleasure at the newfound means to relieve the unhappiness of infertility, and unease at the apparently uncontrolled advance of science, bringing with it new possibilities for manipulating the early stages of human development⁴³.

As we delve deeper into the ethical implications of Assisted Reproductive Technology (ART), our attention turns to the pressing concerns surrounding artificial womb technology. Questions as to how the foetus will be nourished in the artificial womb? Is gestation outside the human body altering divine creation? Does this technology interfere with ensoulment (Ruh)? Could it lead to the commodification of childbirth? Will children born of this technology not suffer from psychological and cognitive consequences?

Artificial Womb Technology

⁴¹ American Society for Reproductive Medicine. (2020). Ethical considerations of assisted reproductive technology.

⁴² Australian Government Ethical guidelines on the use of assisted reproductive Technology in Clinical Practice and Research 2004 (as revised in 2007)

⁴³ Warnock Report of the Committee of Inquiry into Human Fertilisation and Embryology 1984.

Artificial womb technology (AWT) is a system designed to replicate the conditions of a womb for extremely premature infants, providing oxygenation, nutrition, and a warm, fluid-filled environment to support their physiological development and maturation.⁴⁴

Currently, artificial womb technology is still very much in the developmental pipeline, and it is highly uncertain as to what level of safety and efficacy can be achieved in the near future which makes it evolving and being debated by scholars.⁴⁵ The potential application of this new technological platform is the advancement of human reproduction and prenatal medicine by enabling the survival of extremely premature newborns, as well as providing a novel route to motherhood for women without a functional womb or who cannot otherwise gestate a foetus to term due to high-risk traditional pregnancy.⁴⁶ While these may align judging by the intent for which it was applied, there are other possible applications that will bring controversy in the society. Among this application is the use of this technology to enable greater gender equality by allowing healthy women to avoid the physical burdens and pains of pregnancy and childbirth.⁴⁷ Another application is to lessen the moral guilt of abortion by sustaining life of removed foetus within the artificial womb environment and then giving it up for adoption or orphanage upbringing after

⁴⁴ De Bie, R Felix, and others. 'Ethics considerations regarding artificial womb technology for the fetonate.' *The American Journal of Bioethics* 23.5 (2023): 67-78. <<https://www.tandfonline.com/doi/pdf/10.1080/15265161.2022.2048738>> accessed 20th March 2025

⁴⁵ S Zaami, and others 'From the Maternal Uterus to the "uterus device"?: Ethical and Scientific Considerations on Partial Ectogenesis'. *European Review for Medical and Pharmacological Sciences*, 25(23), (2021) 7354-7362 <https://iris.uniroma1.it/bitstream/11573/1610589/1/Zaami_Maternal_2021.pdf> accessed 25th July 2024

⁴⁶ Ibid

⁴⁷ G Cavaliere, 'Gestation, equality, and freedom: ectogenesis as a political perspective'. *Journal of medical ethics*, 46(2), (2020) 76-82. https://d1wqtxts1xzle7.cloudfront.net/61988873/medethics-2019-105691.full20200204-69312-1bnxydv-libre.pdf?1580831837=&response-content-disposition=inline%3B+filename%3DGestation+equality+and+freedom+ectogenes.pdf&Expires=1742508025&Signature=Thz~PJfXvPHcMloVbUPt9SxEHWgwhHBK2BDLYx1AwBHcBn6Qr7IACOTurW8uyON7J4Z-du5W1TbC2nM2Ju4qsnfbq3q~2XOaxloQ0~IOyxCzrE-9P9Gq28qd2GfMnatfall-fdUjqEjBw0ogktbxZUDQs7D3CM6vtHt6zGfe~kzWYE-z4L~9TB79x8oomKzbO9exlcnh6ZxMFMSeCNbu51jmVW291Q817N20VCWxxaY8PvoAnzpk81SM7Xt2q-P9m-mBWicShnsAS~EKIARu1tYIDZhOLwcAifwL2khGY-NbGas3DIFoxzln3LXwvHBIG888eJe4BZ0XirC3P2vGLA_&Key-Pair-Id=APKAJLOHF5GGSLRBV4ZA accessed 28 July 2004

coming to term.⁴⁸ It is also an avenue to enable parenthood for individuals “single mother or father”, lesbians, and gay couples.⁴⁹

From the above forms of applications, ectogenesis may comprise two distinct approaches: “complete” ectogenesis and “partial” ectogenesis, while some conditions for utilizing artificial womb technology will be justifiable others are non-justifiable for supporting extracorporeal gestation.⁵⁰ There are different reactions and concerns that will arise which must be dealt with individually, the moral, ideological, religious belief and practical considerations.

6.0 ISLAMIC LAW PERSPECTIVE ON THE ETHICAL CONSIDERATION

In a natural pregnancy, the mother’s body provides essential nutrients, hormones, and immune protection through the placenta and umbilical cord, ensuring proper foetal growth and development. The Qur’an explicitly describes the womb (*rahm*) as a sacred space where Allah forms and develops life naturally.

"He created you (all) from a single person: then created, of like nature, his mate; and He sent down for you eight head of cattle in pairs: He makes you, in the wombs of your mothers, in stages, one after another, in three veils of darkness. Such is Allah, your Lord and Cherisher: to Him belongs (all) dominion. There is no god but He: then how are ye turned away?"⁵¹

Yusuf Ali in his commentary highlights Allah’s power, wisdom, and divine design in human creation, particularly in the natural stages of fetal development within the womb. He emphasizes that the womb is a sacred space where life is nurtured under Allah’s command, shielded by three

⁴⁸ J Räsänen, ‘Regulating abortion after ectogestation. *Journal of medical ethics*’, 49, (2023) 419–422. <<https://philarchive.org/archive/RSNRRA>> S Segers, G Pennings, and H Mertes, ‘The ethics of ectogenesis-aided foetal treatment’. *Bioethics*, 34, (2020) 364–370.

⁴⁹ LL Kimberly, ME Sutter, and GP Quinn, ‘Equitable access to ectogenesis for sexual and gender minorities’. *Bioethics*, 34(4), (2020) 338-345.

⁵⁰ Muhsin, S.M., Chin, A.H.B., and Padel, A.I. ‘An Ethico-Legal Analysis of Artificial Womb Technology and Extra corporeal Gestation Based on Islamic Legal Maxims’. *The New Bioethics*, 30(1), (2024) 34-46 https://d1wqtxts1xzle7.cloudfront.net/107258836/Ethico_legalWombTechnology-libre.pdf?1699553111=&response-content-disposition=inline%3B+filename%3DAn_Ethico_Legal_Analysis_of_Artificial_W.pdf&Expires=1742508773&Signature=Vvaff8U66jI-fOc9az~xTXudY5nS3rZpJZNcx2OxEVLxY7MSNME7qM9b-OHOZFzIXqhCDiJyensdhtSNuDefnVj7h0ivdVE6ZSGrCmLMMx2iied~dcj2Ur9dvW-T8eNQ~UwZQ~JwfZweQB~2Wu4Q4YiFFvtHITMC6KbFylzDsly~IHGkH95IXd5KWRiFG2WbFtX-IvCC68xLODcqHyES1Y~xfc0ztNNb6gJuwCeVMJOo4CnYned8uVRvTPAk8FoHSD8Yz0tW-GG3lcJg-gP5ptuf4nQguNT~05JE7zMfE6I3CTXfTTvzmDF2Et7HrrR-hIMxRtJuxIEESerPo95XQA__&Key-Pair-Id=APKAJLOHF5GGSLRBV4ZA accessed 30t July 2024

⁵¹ Qur’an 39:6

veils of darkness (the abdominal wall, uterus, and amniotic sac). This interpretation reinforces the idea that gestation within the mother's body is an essential part of divine creation, raising critical ethical concerns about the use of artificial womb technology (AWT) from an Islamic perspective. If AWT removes the biological role of the womb, it could challenge the natural order established by Allah, as gestation outside the human body was not the method ordained in His divine plan. Furthermore, Yusuf Ali's emphasis on Tawhid (Allah's absolute sovereignty over creation) implies that human intervention in fundamental processes of life must align with Shariah principles. While medical advancements can be a form of *Maslahah* (public benefit) when addressing infertility or medical necessity, they should not alter the divine nature of human reproduction for mere convenience.

The Qur'an also states that:

"We created man from an extract of clay; Then We placed him as a drop of sperm in a place of settlement, firmly fixed; Then We made the sperm into a clot of congealed blood; then of that clot We made a (foetus) lump; then We made out of that lump bones and clothed the bones with flesh; then We developed out of it another creature. So blessed be Allah, the Best to create!"⁵²

The above verses also emphasize that human gestation follows a sacred, step-by-step process within the mother's womb, as designed by Allah. The phrase "*Then We developed out of it another creature*" (i.e., the point at which the fetus becomes a distinct human) raises questions about the moment of ensoulment (*Ruh*) in AWT. Scholars debate whether ensoulment (which occurs at 40 or 120 days according to Hadith) would happen if the fetus develops outside the womb. This uncertainty makes AWT highly controversial from an Islamic perspective. Thus, the provisions of Qur'an 39:6 and 23:12-14 serve as a theological basis for discussions on bioethics, suggesting that while medical advancements can assist in procreation, they must not disrupt Allah's natural design of human creation.

Artificial womb technology (AWT) presents an alternative to surrogacy, which is strictly prohibited under Shariah due to concerns over lineage confusion and the exploitation of surrogate women, who are often from lower socio-economic backgrounds. Like surrogacy, AWT could lead

⁵² Qur'an 23: 12-14

to the commercialization of childbirth, where artificial wombs become commodities controlled by corporations or governments, raising significant ethical concerns. The risk of child commodification, exploitation of the poor, and unethical embryo use (e.g., for experimentation) aligns with the Islamic principle of *Sadd al-Dharai* (blocking the means), which seeks to prevent potential harm before it occurs. Therefore, from an Islamic perspective, strict ethical regulations would be necessary to ensure that AWT does not violate core principles of lineage integrity, parental rights, and human dignity.

7.0 IJTIHAD FRAMEWORK ON ARTs

By the beginning of the 1980s, deliberations on Islam and biomedical ethics started to assume a systematised and collective form through combining contributions from Muslim religious scholars and (Muslim) biomedical scientists.⁵³ This brought about Islamic Organization for Medical Sciences (IOMS) where the issue of assisted reproduction was first addressed in their Fiqh Medical Seminar in May 1983.⁵⁴ Islamic jurists, seek to be practical, up to date, and theologically sound in their judgements. The operational structure of collective ‘ijtihad has emerged from these concerns as individual jurists were no longer expert in all of the relevant disciplines, both religious and scientific, required for morally evaluating modern technologies and social structures.⁵⁵ That is why physicians, ones deemed trustworthy in terms of their religiosity and familiarity with the ‘western’ biomedical enterprise, are brought to help jurists accurately understand the biomedical science and technology at issue, as well as to properly conceive the ethical challenge at hand.⁵⁶

For an action to be permissible, all means of achieving it must be in line with principles of Shariah and when it comes to ARTs, the preservation of lineage and the sanctity of marriage must be respected. The ART practitioners must adhere diligently to the fundamental ground rules summarised below in other not to contravene the rules of Sharia which have been put in place by

⁵³ M Ghaly, ‘*Biomedical scientists as co-muftis: Their contribution to contemporary Islamic bioethics*’. *Die Welt des Islams*, 55(3-4), (2015) 286-311.

⁵⁴ A AbdulRahman, ‘*The Role of Islamic Organization for Medical Science in Reviving Islamic Medicine*’. *Journal of Islamic Medicine Association of North America*, (2015) Vol. 32, No 2.

⁵⁵ AI Padela, K Klima, and R Duivenbode, ‘*Producing Parenthood: Islamic Bioethical Perspectives & Normative Implications*’, *The New Bioethics*, (2020). 26(1), 17-37.

⁵⁶ M Ghaly, (2015).

Allah for the common good, decency, and dignity of the society.⁵⁷ These are based on the conclusion of the IOMS and the opinion of other medical shariah authorities around ART.

- i. The inviolability of marital contracts must not be dishonoured at any point in time during the ART process.
- ii. The involvement of a third party in the equation is totally unacceptable whether in the form of a sperm, an ovum, an embryo, or a uterus. This makes surrogacy in all its forms not allowed under the Islamic law.
- iii. Once the marital contract has been terminated either due to divorce or death of husband assisted reproduction can not be performed on the ex-wife or widow.
- iv. The free informed consent of the couple must be sought when it comes to cryopreservation i.e. freezing and storing the excess pre-embryo produced which remains the property of the couple.
- v. Highest standard of professionalism, trustworthiness, integrity and responsibility must be maintained by all staff participating in the ART program.
- vi. Embryo research for the advancement of scientific knowledge and the benefit of humanity is allowed for 14 days post fertilization on surplus embryo donated for research with the informed consent of the couple.

⁵⁷ AA Alaro, 'Assisted Reproductive Technology (ART): The Islamic Law Perspective', Islam and Bioethics, publication of Ankara University, Turkey, (2012) pp. 95-108
<https://d1wqtxtslxzle7.cloudfront.net/35104847/Assisted_Reproductive_Tech_pdf-libre.pdf?1413189575=&response-content-disposition=inline%3B+filename%3DASSISTED_REPRODUCTIVE_TECHNOLOGY_ART_The.pdf&Expires=1742514043&Signature=BQZ7X3eHLv2lq3-M8z5nMmjgkCOOL9Sc5O96bjhCPkIGI8K2nfrgQJy7QV~tDQFkj-AWhRYwhGgjDotN14DTfJncei~wdGHILZ4QPsa3LmL57ObBW1GvY-WYscC5YoePsZAWDuF5AqmK-A2jsCKTGnxP1zu2UcNOBT-wih~1qfmJzo~aUmJ-7OFXtascWoa43gnEAr07-zFr206u4-4ZRVShQ4nmBTvri6rQd-GUx2gh1SnOD-4nfMWrDjQmsg-qh4gk347ObQ4BIDypGJGdojvSqSrs4fgzm-jp20iUn5rxK4rCRB2qdyHUsbZYPXuQWycQmFhQ-tlyK12R66P5Q_&Key-Pair-Id=APKAJLOHF5GGSLRBV4ZA> accessed 2nd August 2024

8.0 CONCLUSION/RECOMMENDATIONS

In Islamic law, ARTs are allowed but there must be a legal union of husband and wife as recognised under the law. A child should bear the name of his father and none other, the introduction of a donor embryo or sperm amounts to having a third party into the union which indirectly amounts to zina, and the chain of lineage is of great importance in the sight of the creator.

This paper recommends that Islamic Medical law and ethics be introduced as a course in the universities, targeting students of law and medicine. This course will provide students with a comprehensive understanding of the ethical and legal dimensions of medical practice from Islamic perspective. It will allow them to navigate the complexities of modern medical technologies while they will be able to adhere to Islamic principles and rules. By integrating Islamic Medical law and ethics into the curriculum, future legal and medical professionals would be well-versed in the religious and scientific aspects of healthcare, leading to more informed decision-making and *Sharī'ah* best practices. In furtherance to this, medical practitioners should acquire knowledge of different religious perspective on assisted reproduction in order to advise patients appropriately. Lastly, *fatwas* passed with regards these technologies should be well publicised for all to be informed of the accepted options in Islamic law.