ART using Surrogacy and Gamete/Embryo Donation: An Islamic Review

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Across ALL Cultures Infertility an Individual, Marital, and Societal Crisis

Universal solutions for infertility:
1. *Medical interventions*
2. *Prayer or spiritual interventions*
3. *Realignment of social relationships*

- Across all cultures realignment of social relationships was *last* or *least* acceptable alternative

- Rosenblatt et al, 1973
Remedies for infertility in the Islamic world must comply with beliefs about the integrity of family lineage, marriage, and children.

There are very divergent beliefs within Islam about acceptable forms of assisted reproduction.

**Unacceptable** remedies for childlessness in Islam:
1. A childless marriage
2. Adoption of child who takes name & lineage of both parents
3. The use of donated gametes or a gestational carrier
Approaches to cultural diversity

- **Emic approaches to culture**
  - Every culture is unique and has a unique psychology

- **Etic approaches to culture**
  - Cultures hold different positions on universal psychological dimensions

Hynie & Burns, 2006
Primary Denominations of Islam

1. **Sunni** (or Ahl as-Sunnah) largest denomination representing 80% to 90% of world’s Muslims. Prominent in Egypt, Saudi Arabia, Morocco, Qatar, Jordan, Malaysia, and Indonesia.

2. **Shia** (or Shiite) second largest denomination. It is the majority denomination in Prominent in *Iran*, Azerbaijan, parts of Iraq, and Bahrain. Shia followers are in Lebanon, Syria, Saudi Arabia, Afghanistan, Pakistan, Kuwait, Yemen, southern Turkey, and India.
Al Azhar University, Egypt: 1980 Fatwa on ARTs

1. Artificial insemination *with husband’s semen* allowed
2. IVF with gametes of married couple and embryo transferred to wife allowed provided there is medical reason and done by expert MD
3. NO 3rd party reproduction allowed=adultery
4. Adoption of donor child conceived via ARTs is NOT allowed=child illegitimate
5. Ex-wife or widow cannot use sperm from deceased or ex-husband
1. Cryopreservation of couple’s embryos allowed for their use only and only during the duration of marriage
2. Multifetal pregnancy reduction allowed
3. All forms of surrogacy forbidden
4. Sperm banks forbidden
5. MD is only qualified person to practice ARTs in all its permitted varieties. If he performs any of forbidden techniques, he is guilty, his earnings are forbidden, and he must be stopped from morally illicit practice.
At the third conference of the Islamic Figh Council in Amman, Jordan October 11-16, 1986, the Council banned all forms of assisted reproduction donations=egg donation, sperm donation, embryo donation

This is Sunni approach

Within Shia Islam, donation is acceptable in some circumstances.

Figh=system of liturgical, ethical, and legal norms
Iran Fatwa by Ayatollah Khomeini, late 1990s

- Allowed donor technologies to be used
- Egg donation allowed provided that both egg donor and infertile mother abide by religious codes regarding parenting (e.g., child of egg donor may inherit from *her* and not IP who is considered adoptive mother)
- Child born via sperm donation has name of infertile father but can only inherit from biological father (sperm donor)
- A form of temporary marriage (*mui’a*) = union between unmarried woman and married or unmarried man contracted for a fixed time period in return for set amount of money. Used to allow oocyte donation
Ayatollah Fadallah’s fatwa

- Opposes sperm donation but supports oocyte donation (sperm donation effectively banned, 2003)
- Gamete donation restricted to married persons
- Oocyte donation allowed as long as husband temporarily marries oocyte donor (women cannot have more than one husband)
- Embryo donation is allowed to overcome both male and female factor infertility (because embryo comes from a married couple)
The early Sunni Fatwa lead to the establishment of the first IVF clinic in the Middle East in Egypt in 1986 and has influenced the practice of ARTs in the Islamic world as the dominant denomination but also more restrictive.

The Iranian Fatwa within the Shi’ite denomination were more ‘liberal’ in allowing the use of donated gametes and embryos but also lead to more complicated measures for actually implementing these forms of ARTs.
Islamic opposition to ARTs

- Opposition based on the premise that various forms of third-party reproduction are tantamount to adultery, confuses lineage, and/or makes parental lineage unclear

  - Schenker JG. RBM Online. 10: 310-9, 2005
  - Yeprem MS. RBM Online. 14: 44-7, 2007
IS DONATION EQUAL TO ADULTERY?

- Adultery/rape specifically defined as physical contact between a man and woman, i.e., they touch.
- Donor recipients do not physically touch the donor. Majority never see donor or receive/desire information about the donor.
- Some believe that marriage is required to produce embryos and embryos created without marriage is adultery.

**Marriage is between people, not cells**

- *Donation is not adultery.*
Adultery breaks the family but donation protects it.
In Islam, all parental-children rights and relations are based on lineage.
What is the Lineage (filiations)?

- **Our resource is the Holy Quran, the main reference among all Muslims around the world.**
- Unfortunately, there is no absolute definition of lineage in Islamic figh.
- It is referred to as blood relation, a relationship made by marriage,...
- Since ARTs involves new treatments, there are no specific references within Islamic law, resources so the problem is approach by searching for proofs and documents that can clarify Islamic ideas about these new reproductive technologies.
<table>
<thead>
<tr>
<th>SOCIAL MOTHER alone</th>
<th>is not focus of discussion</th>
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<tr>
<td>BIOLOGICAL MOTHER</td>
<td>SURROGACY</td>
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<tr>
<td>SOCIAL MOTHER</td>
<td>Gives genetic material</td>
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<tr>
<td>SURROGATE MOTHER</td>
<td>Raises the child</td>
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<td>Carries pregnancy and gives birth to the child</td>
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<td>EGG DONATION</td>
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<td>All these mothers are sharing oocytes or uterus</td>
<td>Therefore, they are all the Child’s real mother.</td>
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<tr>
<td>BIOLOGICAL MOTHER</td>
<td>ALL ARE TRUE MOTHERS</td>
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<td>SOCIAL MOTHER</td>
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<td>SURROGATE MOTHER</td>
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46:15, *We have enjoined on man kindness to his parents: In pain did his mother bear him, and in pain did she give birth. The carrying of a (child) to his weaning is (a period of) thirty months. At length, when he reaches the age of full strength and attains forty years, he says, ‘O my Lord! Grant me that I may be grateful for Thy favor which Thou has bestowed upon me, and upon both my parents, and that I may work righteousness such as Thou mayest approve; and be gracious to me in my issue. Truly have I turned to Thee and truly do I bow (to Thee) in Islam.’*

76.2, *Verily we created Man from a drop of mingled sperm, in order to try him: So We gave him (the gifts), of Hearing and Seeing*

58.2, *If any men among you divorce their wives by Zihar (calling them mothers), they cannot be their mothers; None can be their mothers except those who gave them birth. And in fact they use words (both) iniquitous and false: but truly Allah is one that blots out (sins), and forgives (again and again).*
Definition of Motherhood in 3rd Party ARTs

- Because an oocyte donor, recipient (social mother), and surrogate are all real mothers, all the rights between mother and child are like real mothers.
- In event of an unknown mother (e.g., orphans due to war, earthquake), the rights to the child goes to the current social mother.
- As such, when an oocyte donor or surrogate is anonymous, child’s identity is based on the **social mother (the only real mother)** who has all parent/child rights.
## FATHER

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<th>Sperm donor is ‘real’ father while the social father</th>
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<td>SOCIAL FATHER</td>
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- **Sperm donor**
- Raises child, is the child’s step-father who takes responsibility to provide for the child’s social welfare.
25:54. *It is He Who has created man from water: then has he established relationships of lineage and marriage: for the Lord has power (over all things).*
4:23. Prohibited to you (for marriage) are: your mothers, daughters, sisters, father’s sisters, mother’s sisters, brother’s daughters, sister’s daughters, foster-mothers (who gave you suckle), foster-sisters, your wives’ mothers, your step-daughters under your guardianship, born of your wives to whom you have gone in, no prohibition if you have not done in, (Those who have been) wives of your sons proceeding from your loins and two sisters in wedlock at one and the same time, except for what is past for All is Oft-forgiving, Most Merciful
2.233. The mothers shall give suckle to their offspring for two whole years, if the father desires to complete the term. But he shall bear the cost of their food and clothing on equitable terms. No soul shall have a burden laid on it greater than it can bear. No mother shall be treated unfairly on account of her child. Nor father on account of his child, an heir shall be chargeable in the same way. If they both decide on weaning by mutual consent, and after due consultation, there is no blame on them. If you decide on a foster-mother for your offspring, there is no blame on you, provided ye pay (the mother) what you offered, on equitable terms. But fear Allah and know that Allah sees well what you do.
Some Islamic clergy believe in biological lineage only because the sperm comes from the man’s body so the social father has no biological relation to the child. As such, he cannot be the child’s father.

As such, couples may use donated embryos created by a married couple to solve male factor infertility.

In cases in which the biological father has died, divorced, or lost and the mother marries another man, the child is a step-child of her husband (Islamic term: رابعه محرميت).
Proofs from Holy Quran=Step-Fatherhood

1. Intimacy

2. Expenditure

3. Custody

4. Guardianship

5. Inheritance

1. Intimacy between female child and step-father allowed.

2. Step-father responsible for expenditure of the child and mandated to Islamic court.

3. Real mother’s responsibility for custody of child.

4. Decision about the child’s guardianship will be made in the Islamic court to be given to the mother or to the step-father.

5. Only the biological father has inheritance responsibilities so child cannot inherit from step-father.
Inheritance is not a ‘will’ in which the property of the dead person goes to the biological children of the deceased. In Islam, the deceased can only ‘will’ 1/3 of his properties to his child, although a father can give his child anything while living. The balance (2/3) of his properties are inherited according to Islamic law a portion going to the mother which is then inherited by the child after her death.

**SUGGESTION:** The social father should be legally obligated to make a will and give 1/3 of his properties to ART child.
What do Infertile Islamic Couples *Really* Do?

- Many pursue ARTs within their own countries according to their religious beliefs.
- Others seek solutions outside of their religious doctrine or country.
- They are more likely to seek ARTs that are not approved by their religion/laws than to remain childless, adopt, or divorce a beloved infertile spouse.
The child’s rights to inheritance are tied to his biological lineage rather than social parentage. It is clear controversy remains about what forms of ARTs are feasible within Islamic law and, as such, the rights of the child have not been fully addressed. Within Islamic families, lineage and the integrity of the family are more important than the child’s ‘right to know’ the circumstances of their birth e.g., gamete donor, surrogate, gestational carrier. The issue of telling the child is NOT AN ISSUE.
ROLE OF THE PSYCHOLOGIST

- Psychologists, social workers, and psychiatrists specializing in infertility counseling work closely with physicians as well as religious leaders in helping infertile Islamic couples.
- Patients may be reluctant to go to counseling when referred but do go and find the support of a psychologist (professional, knowledgeable, nonjudgmental) very important especially in cases of male factor infertility which is highly stigmatized.
- Infertility counselors are also helpful to ‘elderly’ infertile couples who wish to stay married but also have a child and to divorced/widowed infertile childless women who are socially marginalized.
DANKE SCHOEN, THANK YOU

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