

**The Conditional Permissibility
of
In Vitro Fertilisation
Under Islamic Jurisprudence**

Afroz Ali



al- Ghazzali Centre
For Islamic Sciences & Human Development
www.alghazzali.org
info@alghazzali.org

All correspondence to:
P.O. Box L-14
Mt.Lewis NSW 2200
Australia

© 1425 / 2004 al-Ghazzali Centre
All rights reserved.
No part of this booklet may be reproduced
for commercial purposes in any form
without prior written permission from
al-Ghazzali Centre.

Published in Australia

In the Name of Allah, The Source of Mercy, The Most Merciful.

Peace and Blessings of Allah be upon His Final Messenger Muhammad, his family, Companions and those who follow him.

This paper aims to provide some information in relation to In Vitro Fertilisation, in relation to its acceptability in Islam.

The information below is my opinion, and is not a Legal Ruling (Fatwa).

1. Introduction

1.1 Brief Introduction to IVF Process

The In Vitro Fertilisation (IVF) is a process which allows the union of the egg from the female and the sperm from the male for successful fertilisation of the embryo to occur in the laboratory. For a pregnancy to result through IVF based on current medical advances in this field, there are essentially four steps that needs to be successfully achieved. My understanding is that pregnancy cannot occur if even one step of the procedures fails.

The four steps¹ in a successful procedure are as follows:

- i) **Retrieval of the mature egg.** Fertility drugs (hMG, Follistim, Gonal-F, or Humagon) are used to ripen more than one egg. This process is called controlled ovarian hyperstimulation. Eggs are recovered by transvaginal ultrasound directed aspiration of the follicles. Intravenous sedation is used. Because timing of the egg collection is critical, ultrasound monitoring and hormone tests are done before egg retrieval.
- ii) **Sperm collection, fertilization, and embryo development.** A semen specimen is obtained and prepared at the appropriate time in relationship to the egg recovery. Meanwhile, the eggs are placed in culture medium to incubate and mature until timing is optimal for fertilization by the sperm. The resulting zygote is called a pre-embryo. In nature as well as in the laboratory,

¹ <http://mednews.stanford.edu/releases/2000/feb/releases/>

- iii) fertilization may not occur, nor does development always continue once the egg is penetrated by sperm.
- iv) **Transfer of the developing embryo(s) into the uterus.** On the third or fifth day after egg recovery, the embryo(s) are transferred into a small tube through the cervix into the uterus. This process is technically much simpler than the egg retrieval in that it does not require anaesthesia and is like a regular pelvic exam.
- v) **Implantation and growth of the embryo(s).** After fertilization and transfer, further development and implantation of the embryo(s) in the uterine lining is governed by hormones, receptors on the uterine lining, and other unknown factors. Blood tests will be taken to detect pregnancy. Additional hormones are given to support the early pregnancy.

1.2 Introduction to Consideration Under Shari'ah

This matter is considered to be in the *Mutaghayyirat* category of Fiqh; it is a matter that is not static over time, but arises due to changes, advances and newer contexts in human existence. Hence most Scholars, and I believe the European Fiqh Council (which consists some of the most knowledgeable of our Ulema- from Shaykh Abdullah bin Bayyah, Shaykh Qaradawi as well as Shaykh Munajjid), as well as Al-Azhar University, have considered this matter beyond a particular School of Thought. This is an important matter to recognise that dynamic rulings and opinions, due to changing times, must be considered under the 4 Schools of Thought collectively.

IVF is a classical example that Islamic Legal System is not a static one, frozen some 1425 years ago, but that continues to engage with the changing times, and reflecting on the Primary Sources of human guidance, being the Qur'an and Sunnah. This process of engagement and assessing how these newly found matters apply or affect human beings, and what responsibilities lie upon those who believe in Allah and His Final Messenger ﷺ, is an obligation upon those with Knowledge, the Rightly Guided Scholars of our time.

This matter needs to be considered by assessing the following:

- i) Whether this matter been explicitly or implicitly been decreed in the Qur'an or Sunnah;
- ii) Whether this matter has a consensus among the Companions of the Messenger of Allah ﷺ;
- iii) Whether there is any precedence in any rulings or opinions given by any of the Scholars within any of the four Schools of Thought;
- iv) In the absence of the any of the above, if there is any clear benefit, or harm, in entertaining the possibility of the matter at hand.

This Paper will attempt to consider these aspects and shed some light on this important issue, which is fast becoming a norm in the modern society we find ourselves in. This Paper will also provide the opinions of the current Scholars of our time, who have a considerable understanding of the IVF process as well as are experts in the field of *Usool al-Fiqh* and *Fiqh*, the methodological process of Islamic Jurisprudence, as well as the Jurisprudence as it currently exists.

2. IVF as an Alternative

2.1 Reasons for Consideration

Before we embark into an analysis of the matter under Islamic Jurisprudence, it is important to consider the reasons why IVF would be of any benefit for humanity. The reason is that Islam is for human benefit. Allah, The Creator, has placed human beings as an active witness and guardian to all that has been created in the universe, that the creation is used for current and future benefit; that it does not cause harm nor does it remove access to that which is created, for future generations to come.

The basic reason to consider IVF for legally married couples is when they have attempted natural means to conceive but have failed due to infertility causes. There can be many reasons why fertilisation of the egg by the sperm or the implantation of the fertilised zygote is unsuccessful in otherwise completely healthy couples.

Therefore, the consideration is that infertility in a normally healthy couple is the cause for failed pregnancies, and that a procedure exists that could greatly assist in establishing pregnancy.

It is therefore important to understand how infertility is defined. Infertility is defined² as the inability of a couple to achieve pregnancy despite unprotected intercourse for a period of more than twelve months duration. More than 15% of couples of reproductive age have impaired fecundity (difficulty achieving pregnancy). The rate of male infertility has increased in the past fifty years and it is a well known fact that female fertility decreases as a woman approaches age forty.

There are many reasons for infertility. Whilst there is a deeper concern for some of the rising causes for impaired fecundity, e.g., environmental degradation, food quality decline, use of chemical and the like, this Paper does not delve into the inferred responsibilities and obligations upon human beings to act on the increasing regress in the environment the human lives in. Having said that, I have a firm belief that we will be questioned by The Provider, Allah Ta'ala, for our roles in this degradation, as well as our inaction about it.

The Qur'an and Prophetic Tradition clearly state that it is both the male and female reproductive fluids which contribute to the offspring of those parents.

"Verily, I created humankind from a small quantity of mingled fluids."³

It is narrated that a Jew asked the Prophet Mohammed the following question, "O Mohammed. Tell me from what thing man is created." The Prophet answered, "From both male Nutfah and female Nutfah man is created."⁴

This is an important matter to recognise in the scheme of this discussion. It had been long held that only the female played a part in the fertilisation and pregnancy, but it is

² Prof. Brent Miller- *Family & Human Development*, Utah State University

³ Qur'an, 76:2

⁴ Musnad Ahmad ibn Hanbal

clear, now even in Science, that both males and females play an important role. The reason why this is important is because one needs to consider the reality of infertility in either the male OR the female, not only the female alone.

Some of the reasons for infertility are:

- i) Low sperm count in an otherwise healthy male⁵;
- ii) Degenerative or low quality sperm⁶
- iii) Ovarian dysfunction due to other earlier fertilisation failures⁷
- iv) Chemically-induced infertility⁸
- v) Sexually transmitted diseases⁹
- vi) Scarring or blocking of the fallopian tubes, high acidity¹⁰

There are many other reasons, and most are permanent causal factors, in an otherwise healthy adult whose egg or sperm is able to be fertilised without harm or undue risk. It is noted that everything carries an element of risk, and all occurs or not by the Will of God. Undue risk here means that which is clearly avoidable, and has no precedence of permanent or unhealthy damage.

The immediate consideration therefore is, whether there is an intervention process which could be used to step over the initial hurdles to actual fertilisation and/ or implantation of the fertilised egg in the uterus, hence establish a successful pregnancy.

2.2 Scope of Legitimate Consideration

Part of considering the possibility also requires the clear understanding of the boundaries of the possible legitimate use of IVF as that intervening alternative, within the 5 Rulings of Islamic Jurisprudence:

- i) Obligatory
- ii) Recommended

⁵ Bonde, 1998

⁶ Carlson, 1992; Swan 1997

⁷ Hakim, 1995

⁸ Mt. Sinai School of Medicine New York Survey; Houser 2003

⁹ Prof. Brent Miller- *Family & Human Development*, Utah State University

¹⁰ Prof. Brent Miller- *Family & Human Development*, Utah State University

- iii) Permissible
- iv) Reprehensible
- v) Prohibited

There are no clear proofs in the Primary Texts, the Qur'an and Sunnah, to allow a Jurist to place the use of IVF in any one of this category. It would require Qiyas (Analogical Reasoning) and possibly Istihsaan or Masala al-Mursala (consideration of clear benefit in the absence of clear proof for or against it) as possible tools to assess this consideration.

There are other clear boundaries, however, which are implicit in the matter of reproduction. The actual fertilisation is a form of sexual reproduction, regardless of the process it occurs by. They are:

- i) Who can legitimately participate in sexual reproduction;
- ii) Whether any person, who may be legitimately permitted to copulate in terms of (i) above, could in fact consider IVF as an alternative.

Islam requires that the right for sexual relations is exclusively honoured upon a legitimately married couple. This completely excludes the possibility of donor sperm or egg from a person who is not part of the marriage. Therefore, only married couples would be permitted to consider this alternative, and cannot accept sperm or egg donors. The actual act of sexual reproduction is considered in Islam at the cellular level. Qur'anic decree on preserving biological lineage is clear:

It is He (Allah) who created mankind from water, then has He established their relationship of lineage and marriage for your Lord has power over all things"¹¹

In relation to whether any couple may opt for IVF, it is clear in Islamic Jurisprudence that the natural process of any act is the norm by which that particular act should be performed. This falls under the rules of "strictness" or 'Azeem, being rulings of

¹¹ Qur'an, 25:54

permissibility not concerned with context or circumstance of one person.¹² For that act to differ from the norm, in other words to conditionally permit that which would normally be impermissible, there has to be at least one reason which would cause harm or would ultimately result in the act not fulfilling its purpose, in order to consider an alternative. This alternative is normally referred to as a *Rukhsa*, or dispensation.¹³

In this context, therefore, it would only be permitted to take a dispensation from the natural methods of copulation, if and only if the act itself was harmful or would not attain its ultimate purpose, i.e., conception. In other words, if a legitimately married couple, for satisfactory reasons, were unable to have successful pregnancies, would be allowed to consider a dispensation... an alternative.

It is clear, therefore, that there exists a legitimate possibility within Islamic legal system, to consider an alternative like IVF for such couples. Given that there is no evidence of a negation of the possibility of IVF as an alternative nor an affirmation within the Primary Texts, it can be seen that there is clear benefit for couples, to be able to conceive and offspring.

3. Qur'anic Considerations

The Qur'an refers to infertility as a matter. The Qur'an and Prophetic Narrations provide a clear indication of infertility of Sarah, the wife of Prophet Ibrahim, peace be upon them. In order for Prophet Ibrahim to borne a child, he was given Hajar to conceive a child with him- Isma'il, peace be upon them all.

*She (Sarah) said, "Alas for me! Shall I bear a child; seeing I am an old woman and my husband (Ibrahim) an old man? That would indeed be a wonderful matter!"*¹⁴

¹² 'Umdat as-Saalik- c6.1

¹³ 'Umdat as-Saalik- c6.2

¹⁴ Qur'an, 11:72

...And they (the Angels) gave him (Ibrahim) glad tidings of a son endowed with knowledge. But his wife came forward clamouring, she smote her forehead and said, "A barren old woman!" They said "Even so has your Lord spoken and He is full of wisdom and knowledge." ¹⁵

And, another record of infertility is recorded in the story of Zakariah and his wife Ishbah, who later conceived by the grace of God, a son- Yahya, also known as John the Baptist, peace be upon them all.

And (remember) Zakariah, 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 We granted him Yahya: We cured his wife's (barrenness... infertility) for him. These (three) were ever quick in emulation in good works; they used to call on Us with love and reverence, and humble themselves before Us. ¹⁶

Surely, an argument could be put forth, that these were direct interventions, or Miracles of God Almighty. However, we must also understand that we are speaking of Prophets of God who had direct interventions in all parts of their lives. What is more important and directly applicable to us, is the wisdom behind these narratives and how they could apply to us for clear benefit. It is clear from these two stories alone, that infertility is a reality, yet it does not have to be a detrimental factor in conceiving an offspring. There is further evidence in these two stories that a form of alternative is possible and acceptable.

A further refutation may be forward that the Qur'an clearly states:

Or He bestows both males and females; and He leaves barren whom He will. ¹⁷

This may imply that God Almighty has Willed some to be infertile, and so humans must submit to that. This is clearly using correct Islamic Principles to argue against an incorrect assertion. Certainly God Wills everything, and only He gives life, and takes

¹⁵ Qur'an, 51:28-30

¹⁶ Qur'an , 21:89-90

¹⁷ Qur'an, 42:50

it. However, that is the very point of the verse quoted, to emphasise that Allah is the One who is full of Power and Knowledge.¹⁸ The verse is not outlining a Decree to leave a barren person in that state. This is not the intent of the verse, but that whatever we do, all dominion belongs to God Almighty, including foreknowledge of all things like birth or inability for one to conceive.

4. Current Scholarly Advice

The opinions and rulings of current Scholars are reproduced here, so that the diverse assessment of the matter can be reviewed.

4.1 Ruling 1

Praise be to Allaah.

Concerning the situation mentioned in the question [In Vitro Fertilisation, from a legally married couple], there has been a great deal of discussion amongst the scholars of the current age. Some say that it is permissible, some say that it is forbidden, and some say that we cannot comment either way. Among those who said that we cannot comment either way was Shaykh ‘Abd al-‘Azeez ibn Baaz (may Allaah have mercy on him). The researcher thought that the view of the majority of modern scholars is most likely to be correct, but subject to certain conditions, namely:

- a) urgent need, i.e., when it is not possible to achieve pregnancy by natural means;*
- b) the doctor dealing with the case should think it most likely that no harm will be caused by doing this procedure;*
- c) there should be no room for sperm (lit. lineages) to be mixed*

The ruling on the case mentioned is the same as the ruling on a case where sperm is taken from a man and an egg from his wife, then the egg is fertilized in a test tube and

¹⁸ Qur’an, 42:49-50

returned to the uterus. The most correct view is that this is permissible, subject to the conditions mentioned above.¹⁹

4.2 **Ruling 2**

This matter [test tube babies and IVF] has been studied by the Islamic Fiqh Council (Majma' al-Fiqh al-Islami), who issued the following statement:

One: The following five methods are forbidden according to sharee'ah. They are forbidden either in and of themselves, or because of their consequences such as mixing lineages, not knowing who the child's mother is, or other reasons that are objectionable according to sharee'ah.

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).*

Two: The sixth and seventh methods are acceptable as a last resort in cases of necessity, when it is certain that all necessary precautions have been taken. These two methods are:

¹⁹ Majallah al-Da'wah, issue no. 1796, p. 20 (www.islam-qa.com)

6. *When the sperm is taken from the husband and an egg is taken from the wife, fertilization is done externally, then the embryo is planted in the womb of the wife.*
7. *When the sperm of the husband is taken and injected into a suitable place in the cervix or womb of the wife so that fertilization may take place internally.*

*Other reservations that pose a concern in this matter include: the uncovering of the woman's 'awrah and most private parts; the possibility of mistakes in the laboratory; the possibility that some weak-minded people in some hospitals may breach their trust and deliberately switch eggs or sperm in order to make the operation a success and earn more material gains. So we have to be extremely cautious when dealing with this matter. And Allaah knows best.*²⁰

4.3 Ruling 3

Sheikh Ahmad Kutty, a senior lecturer and Islamic scholar at the Islamic Institute of Toronto, Ontario, Canada, states:

*"IVF is permissible in Islam only on condition that both sperm and egg involved in the process originate from a man and a woman who are married to each other. To introduce an egg or sperm from a third person to the equation is akin to sharing the marriage bed with someone else. It is therefore considered no different from zina (adultery) in Islam. A child born through such a procedure is born of zina in Islam".*²¹

4.4 Ruling 4

In the name of Allah, the inspirer of truth. All praise is to Allah, Most Merciful and Compassionate, and all blessings and peace to our Master Muhammad, his family, companions, and those who follow them.

The Islamic Fiqh Academy, and other bodies, including Al-Azhar's Fatwa Committee, have studied this matter[IVF] at length. They concluded that artificial insemination is permitted, as long as only the husband and wife are reproductively involved. This is permitted whether the fertilization itself occurs inside or outside the woman. It is not permitted to use third party ('donor') sperm or eggs, even when either spouse is

²⁰ Al-Majma' al-Fiqhi, p. 34. (www.islam-qa.com)

²¹ IVF Symposium- Faith & Science, 2002 Toronto Canada

infertile. They stressed that one should ensure that such procedures are carried out in a safe way, for obvious reasons.

Some of the scholars emphasize, too, that such procedures should only be used when normal means prove ineffective.

It is important, in the end, to remember that while we have been commanded by Allah Most High to take all permitted means, we have also been commanded to believe that means themselves do not have an effect; only Allah does.

And Allah knows best.

Walaikum assalam,

*Faraz Rabbani.*²²

5. Conclusion

In view of numerous principles of the Methodology of Islamic Jurisprudence, namely:

- i) Protection against difficulty and constriction (*`usr wa haraj*);
- ii) The necessity to refrain from causing harm to oneself and others (*la darar wa la dirar*);
- iii) The priority of averting corruption over attaining benefit' (*dar'u al-mafaasid muqaddam `ala jalb al-masalih*)

As well as *Istihsaan* (equity) and *Masala al-Mursala* (clear societal benefit), In Vitro Fertilisation is a permissible consideration.

Given the overwhelming evidence in the discussion above, it is conclusive that In Vitro Fertilisation is conditionally permissible in Islam, under the scope of the Five Rulings. The conditions are:

- i) that the sperm be from the legitimate father and the egg be from the legitimate mother;
- ii) that the uterus the fertilised zygote is implanted into is the original legitimate mother referred to in (i);

²² <http://www.sunnipath.com/qandadetailframes.aspx?task=4§ionid=3>

- iii) that adequate and conscious effort be expanded to eliminate the risk of the sperm, egg or the zygote to be swapped or similar error being made which may affect the biological lineage of the offspring;
- iv) that the legitimate couple be otherwise have attempted via natural means, but evidence exists that they cannot conceive naturally;
- v) that there exists a real possibility for them to conceive via IVF.

Infertility is considered a disease²³, and cures do exist. God Almighty has never prohibited cures to diseases. In Vitro Fertilisation is one ethical solution.

*Narrated Abu Huraira, The Messenger of Allah ﷺ said, "There is no disease that Allah has created, except that He also has created its treatment."*²⁴

And Allah knows best.

²³ *Assisted Reproductive Technology Fact Sheet*- Centres for Disease Control & Prevention, Atlanta USA

²⁴ Bukhari Vol 7, Book 71/582