

The scope of Test Tube Baby Fertilization in Islam

Muhammad Yaseen: Assistant Professor, Department of Islamic Studies, Sadiq Public School Bahawalpur.

Shams-ul-Basar: Ex- Prof. and Chairman, Department of Islamic Studies, The Islamia University of Bahawalpur.

Abstract:

Childlessness is one of the grimmest socio-cultural issues of the 3rd world. Particularly, inside the male-dominated societies, infertile ladies face lot of troubles such as tendency of re-marriages of their husbands and increasing rates of divorces. Women' rights are at stake and they have uncertain future. They fall prey to a number of social and psychological issues. In most cases, family circles are shattered and women in the long run devote suicide. With the passage of time different methods were invented by medical science to solve this problem. Test tube baby fertilization is the most popular method. In different societies people are following it without caring its ethical concepts. This article will revolve around these aspects and highlight its different aspects and conclude the legal way of adoption of the method .

Key Words: IVF, Artificial Insemination, Artificial methods of child birth, medically assisted conception.

Introduction:

Modern Technologies are playing a very important role for providing pleasure and happiness to human being in one side while on the other side it is creating many questions in their minds whether they can adopt and utilize them in their practical life or not. Modern artificial methods of child birth e.g. test tube baby fertilization is among such issues, which need debate about their practical adaptation. The following aspect will be analyzed in this article.

*Need of test tube baby fertilization.

*Permissible method of acquiring sperms and eggs.

*To whom embryo transfer is permissible.

*Third party involvement (donors).

*Scope of test tube baby fertilization in Islam

Need of test tube method:

In the past the childless people were much worried to carry the name of their family. They had very limited treatments to conceive a child, they, therefore, adopt a child. Letter on artificial insemination was introduced but still some couples could not get benefits from it. At last Test Tube Baby Fertilization method was introduced. This fulfilled the desired of having a child. Consequently this method was adopted worldwide. Islam doesn't see any wonderful progress and scientific initiative in the field of science in deceptive glance because it allows its followers to take steps for the betterment of humanity. Infertility is also one of the diseases so they can be cured by modern technology as there is no such disease in the world which has not its treatment. The Holy Prophet (ﷺ) himself said,

عن ابي هريره رضى الله عنه عن النبي ﷺ قال: ما انزل الله داء الا انزل له شفاء. (1)

“ Narrated by H. Abu Hurairah (R.A) that the prophet (ﷺ) has said, "There is no malady that Allah has sent down aside from that He likewise has sent down its medication". (2)

This hadith shows that entire medical discoveries for the treatment of diseases are taking place with the will of Almighty Allah. The holy prophet (peace be upon be him) himself induced the people for the treatment of diseases by saying;

عن اسامة بن شريك قال: قالت الاعراب يا رسول الله ﷺ الا نتداوى؟ قال نعم يا عبدالله تداووا فان الله لم يضع داء الا وضع له شفاء. او قال: دواء الا داء واحد فقال يا رسول الله ﷺ وما هو؟ قال الهزم. (3)

“Narrated by Usama bin Sharik that desert Arabs asked the prophet (ﷺ) of Allah should we make use of medical treatment? Prophet (ﷺ) replied, O slaves of Allah make use of medical treatment. For Allah has not made a disease in the world without a remedy for it, with the exception of one disease. They asked about that disease, he replied “old age.”

He also said,

عن اسامة بن شريك قال اتيت النبي ﷺ واصحابه كانوا على رءوسهم الطير- فسلمت ثم قعدت فجاء الاعراب من ماهنا وماهنا فقالوا يا رسول الله ﷺ انتداوى- فقال تداووا فان الله عزوجل يضع داء الا و يضع له دواء غير داء واجد الهزم- (4)

“Narrated by Osama bin Sharik that I came to the prophet (ﷺ) and his companions were sitting as if they had birds on their heads. I saluted and sat down. The desert Arabs then came from here and there. They asked Apostle of Allah, should we make use of medical treatment? He replied make use of medical treatment, for Allah has not made a disease without appointing a remedy for it, with the exception of one disease namely old age. (5) He further said,

ان ابا هريرة رضى الله عنه اخبرهما انه سمع رسول الله ﷺ يقول في الجنة السوداء شفاء من كل داء الا السام- قال ابن شهاب : والسام الموت ولحبة السوداء الشونيز- (6)

“Abu Hurairah (R.A) Narrated that I heard Allah’s messenger (ﷺ) saying there is curing in black seed for all diseases except “Sam” Ibne Shahab said that “al-Sam” is death and “Black seed” is called black cumin. (7)

These sayings proved that treatment of any disease is Sunnah of Holy Prophet.(ﷺ)

As we know that infertility is also a kind of disease. So a person can get benefits from the modern methods of treatments. But it is

necessary to keep the laws and principles set by Islamic Shari'h. Hence test tube fertilization is a kind of treatment for providing children to childless couples, so this method can be benefited. Michael writes, "Muslims recognize if a couple has problems concerning a baby they may need medical help, there is no objection to IVF or AIH."(8)

According to the decision of majlas-e –al-majma-al-Fiqh –al-Islami Makkah, "Married women who are not able to be pregnant, for them need of a child is legal object / desire. For this they can be treated by adopting artificial method of child birth."(9)

Permissible method of acquiring sperms:

For the process of test tube baby, the first stage is of acquisition of sperms and eggs. Different methods are used for it. The first one is "masturbation". There is divergence among the scholars for this method. Majority of the scholars acknowledge this method contraband. But in constraint and for conceiving a child they are agreed on the legality of this method.

Mr. Vardit narrates; "This method is permitted even if the husband has to masturbate in order to collect the seed in to a vessel, although Islamic law in general is not supportive of free masturbation." (10)

The second method is called "exterior ejaculation and storing sperms in pot". It is better and free from shariah defects. The third method is "use of condom" it is preferable and safe. (11)

The fourth method is PESA (percutaneous epididymal sperm aspiration) technique in which the sperm is sucked out from the epididymis by puncturing it with a fine needle. And fifth one is

MESA (micro epididymal sperm aspiration) technique. In this method the doctor uses microsurgery to find epididymal sperms. Some doctors place unipolar rectal electrodes around the base of the penis and 60-cycle A C current at low voltage is given to cause erection and ejaculation .

Acquiring of eggs:

There is only one method for getting eggs; the probe is inserted in the vagina or bladder. Two points should keep in mind while obtaining eggs .

- a. patient should feel less pain.
- b. they should consult a lady doctor. If lady doctor is not available then only trustworthy male doctor may be consulted but it is necessary that some other person from the family should be present there at the time of this process .
- c. woman uncover only that part, unavoidable to expose.

(12)

To whom embryo transferred is allowed:

In the second stage, the egg and the sperms are fertilized in a tube and injected in the uterus of the woman. This technique creates different questions.

- (i) If the sperms of husband and eggs of his wife are fertilized outside the body whether it is allowed to transfer this zygote in the wife.
- (ii) Whether the divorced woman can transfer zygote in her uterus after the separation from her husband.
- (iii) After the death of husband, a woman can inject zygote in her uterus.

(iv) If the husband or wife is physically unfit to produce sperms and eggs whether they can get the sperms or eggs of third party (donor.)

Islam provides the following guide line ;

Fertilization after the sexual intercourse is the natural process of pregnancy which is defined in the Holy Quran :

هو الذى خلقكم من نفس واحدة و جعل منها زوجها ليسكن اليها فلما تغشها حملت خفيفاً فمرت به- (7:189)

“ It is He who created you from one soul and created from it its mate that he might dwell in security with her. And when he covers her, she carries a light burden and continues therein”

This verse clears that pregnancy and fertilization is relating to sexual contact. While in test tube method the sperms and eggs are fertilized outside woman's body and then injected in the uterus. It is un- natural method .In Islam, a person is allowed to adopt this method only when he is not able to fertilize his wife through sexual intercourse but he must care that the eggs or sperms of third party (donor) are not mixed in fertilization. The doctor should be trust worthy and there would be complete privacy, and the important thing is that womwn is not adopting this method to avoid her from the sexual intercourse. Authority at Kuwaiti Ministry of Endowments (Waqfs) wrote, “There is no objection in Islamic law to adopt this procedure as long as the insemination involves a married couple and the fetus is implanted in the uterus of woman who has produced the ovum [the Authority] also rules that when the test tube insemination has a harmful effect on the fetus, it is prohibited.”(13) Mufti 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 sperms and eggs involved in the process, originated from a man and a woman who are married to each other.”(14) In the Fiqh Academy at Jeddah and WHO after various meetings in 1980-2000, it was decided; “Test tube baby is lawful under the following conditions;

If it involves married couples only.

- (a) During the marriage life.
- (b) Sufficient and meticulous care is taken to avoid lineage confusion.”(15)

In third conference of the Islamic Fiqh council held in Amman, Jordan in 11-16 Oct. 1986, the council is unanimously agreed in the following two methods of In vitro fertilization;

- (a) Fertilizing a woman’s ovum with her husband’s sperms outside the body and then transferring the fertilized ovum into her uterus.
- (b) Inserting the man’s sperms into his wife’s uterus so that the fertilization is made into her uterus.(16)

In the above-mentioned two methods the first one is more painful than second one. As in the first process woman has to bear pain twice. First while obtaining eggs and second when the zygote is implanted in her uterus. In the second method she has to bear pain only once when the zygote is implanted in her uterus. So the second process should be followed until unless the first one is failed .

All above-mentioned verdicts of scholars show that test tube is allowed as a treatment when the sperms and eggs of wife and husband are used for fertilization or making ovum and inserted into wife's uterus.

Implanting of zygote after separation because of divorced/ death

The following questions raised when a wife is separated from her husband in case of divorced or death.

- a) Husband divorced his wife in this state that the egg and sperms were not yet fertilized. Whether she can make them fertilize and inject them in her uterus.
- b) If woman is divorced in such a state that egg and sperms had been fertilized before their separation whether she can implant the zygote in her uterus after the divorce ?
- c) Woman was divorced in such a state that her egg was being taken but could not fertilize before the death of her husband. Whether those eggs can be fertilized with the sperms of her present or second husband?
- d) In case of the death of her husband whether she can implant the zygote
in her uterus? (17)

In the case of "A" and "D" both have got separation. Their marriage contract has broken away and now they are stranger for each other, so their sperms and egg cannot be fertilized. Marcia C. Inhorn, Director for middle Eastern and North African Studies in University of Michigan narrated, "If the marriage contract has come to an end because of divorce or death of husband, medically

assisted conception cannot be performed on the x-wife even the sperms comes from the former husband."(18)

It is cleared that after the separation (divorced) the egg and sperms cannot be fertilized and injected in the uterus of x-wife. But in case of death if the sperms and egg were fertilized and implanted few months before the death of husband then it is allowed. (19) Otherwise it is not allowed. Ibn Nujaim says; "Death nullifies the ruling relevant to this world, because it is a state of total helplessness."(20) In the "B" condition, when eggs and sperms have been fertilized before the separation then woman is bound to implant the zygote in her uterus because now the zygote will get same status as it get after the pregnancy in the uterus in a natural process, and child will be referred to her previous husband.(21)

In case of " C" if the eggs have already been taken and not fertilized then those eggs can be fertilized with the sperms of her new husband but if the second husband is also medically unfit, if he is healthy than those eggs cannot be used. While Hafiz Abdul Salam bin Muhammad, Naib Ameer "Jammat-ul-Dawa-ul-Islamia Muraid ke" is not agreed on it. He says, "When those eggs were obtained, those were not legitimate for the second husband. These were lawful/ legitimate for the first husband. Now at the time of new husband her eggs are new, as according to the modern science all the cells of the body are changing continuously."(22)

Third party involvement (Donor)

The third party is involved in two ways;

(a) By obtaining the sperms or eggs of third person except husband or wife to conceive a child.

(b) Using or obtaining the uterus of any other woman except wife to implant a zygote in the involvement of third party, the following questions arise.

Why is donor needed?

Why is surrogacy needed?

What are the Islamic verdicts about surrogacy?

Now we answer these questions in the light of Islamic teachings.

Why is donor needed?

It consists of two types

- a. Obtaining sperms.
- b. Obtaining eggs.

(a) Obtaining sperms:

Because of the following reasons people obtain sperms.

- (a) For conceiving a child having the qualities of great, intelligent, intellectual and skillful person.
- (b) By birth or accidentally husband/wife is not able to produce required number of sperms or eggs necessary for fertilization.
- (c) Sometime couple follows this immodesty and impudence without considering it indecent act.(23)

Islamic concepts about Donors;

Sometime a woman, by birth or accidentally is not able to produce eggs. Male obtains the eggs of any other woman (donor), fertilized it with his sperms and implanted it in his wife's uterus. It is haram as the other woman is not his wife. Islam never allows having a sexual intercourse with other woman. It emphasizes to be lemmatized with one's own wife. Almighty Allah says;

نساءكم حرث لكم فاتوا حرثكم اني شئتم- (2:223)

“Your wives are as a tilth unto you; so approach your tilth when or how you will .”

Here Almighty Allah is bounding the males to have sexual intercourse only with their wives. While in the above-mentioned condition, the egg is of that woman who is not his wife. Therefore, it will be the form of adultery and is haram in Islamic Shariah. (24)

The prophet (ﷺ) himself forbade this kind of act by saying;

عن رويغ بن ثابت الانصارى قال قام فينا خطيبا قال اما انى لا اقول لكم الا ما سمعت رسول الله ﷺ يقول يوم حنين قال لا يحل لامرء يؤمن بالله و يوم الآخر ان يسقى مائه زرع غيره بعنى اتيان الحبال- (25)

“Ruwaifi bin Thabit Al-Ansari said; should I tell you what I heard the Apostle of Allah says on the Day of Hunain. It is not lawful for a man who believes in Allah and last day to water what another has sown with his water (meaning intercourse with women who are pregnant) (26)

This is clear that no one is allowed to take the egg of any other woman. In case of any disease in the wife he can marry to someone else rather adopting the haram mean because Almighty Allah permits a male to marry four women by saying;

فانكحوا ما طاب لكم من النساء مثنى وثلاث وربيع- (4:3)

“Get married the women of your choice, two or three or four; (at a time)”

In spite of this if a person insist to obtain eggs of any other woman then he is transgressor and sinful and his all arguments will be considered only lame excuses.

The other condition of third party involvement is that husband is not able to produce required numbers of sperms necessary for fertilization of his wife, so he or she obtains the sperms of any other healthy person directly or from the sperms banks and after fertilizing them with her egg she implants them in her uterus to conceive a child for her husband. Such act is also haram again as it is resemble to adultery. In the period of ignorance we find examples resembling to this type. Imam Abu Dawud narrates with the reference of Hazrat Aishah (Allah be pleased with her)

ان عائشه رضى الله عنها زوج النبي ﷺ اخبرته ان النكاح كان في الجاهلية على اربعة انحاء فكان منها نكاح الناس اليوم يخطب الرجل الى الرجل وليته فيصدقها ثمه ينكحها و نكاح آخر كان الرجل يقول لامرته اذا طهرت من تمسها ارسلني الى فلان فاستبضع منه و يعتزلها زوجها ولا يمسه ابدا حتى يتبين حملها من ذلك الرجل الذي تستبضع منه فاذا تبين حملها اصابها زوجها ان احب وانما يفعل ذلك رغبة في نجابة الوالد فكان هذا النكاح يسمى نكاح الاستبضاع- (27)

“Hazrat Aishah (Allah be pleased with her) wife of prophet (ﷺ) said; marriage in pre-Islamic times was of four kinds Another kind of marriage was that a man asked his wife, when she became pure from menstruation, to go to so and so, and have sexual intercourse with him. Her husband kept himself aloof, and did not have intercourse with her till it became apparent that she was pregnant then he can approach her if he liked. He would do so in the interest of the nobleness of the child. This marriage was called Istibdha (to utilize a man for intercourse for a noble birth)" (28)

There is no difference in the present form of donor's involvement and the actions done in ignorance period. Sheikh Jsd-ul-Haq (Al-Azar) considers sperms donation haram by saying, “To make the wife pregnant with the sperms of any other male than husband in either condition, husband has no sperms or having no sperms

required for fertilization is haram in shariah because of it, lineage is certainly mixed and child is referred to that father to whom sperms had not been used. It is kind of adultery and result of adultery will be traced upon him / her and according to the teachings of Holy Quran and Sunnah it is absolutely haram.”(29)

In spite of this permission if any woman is agreed to fertile her eggs with the sperms of other person than husband then both husband and wife trespass the limits set by Almighty Allah. It may create a passion of contemptuous against her husband and will cause the destruction of their family connection. Vardit says; “The wife’s curiosity may be aroused as to whose semen has been inserted into her body, and she may also grow contemptuous of her sterile husband. Consequently their family will be destroyed.”(30)

If husband is sterile and forced the wife to implant the zygote fertilized by the sperms of other man, she can demand khula from him, permitted by Islam instead of indulging in the act of adultery. Sheikh Ahmad Kutty says, “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 procedure is born of zina in Islam.”(31) If the doctor did this act fallaciously and a person know about it after the implantation of zygote in the uterus of wife. There is no doubt of its sinfulness. But now days a lot of medicines are available to miscarriage this pregnancy but it is allowed in preliminary stage. (32) if couple came to know of this mistake after four months then they are not allowed to adopt the

process of abortion because baby gets soul after four months. The Holy Prophet (ﷺ) says

عن ابن مسعود رضى الله عنه قال حدثنا رسول الله ﷺ و هو الصادق المصدوق ان خلق احدكم يجمع في بطن امه اربعين يوما نطفة ثم يكون علقة مثل ذلك ثم يكون مضغة مثل ذلك ثم يبعث الله اليه ملكا باربع كلمات فيكتب عمله و اجله و رزقه و شقى او سعيد ثم ينفخ فيه الروح- (33)

“Hazrat Abdullah bin Masud (Allah be pleased with him) reported that Allah’s messenger who is the most truthful and his being truthful said: verily your creation is on this wise one of you is collected for forty days in his mother’s womb in the form of blood after which it becomes a clot of blood in another period of forty days. Then it becomes the lump of flesh and forty days later Allah sends His angel to it with instruction concerning four things: so the angel writes down his livelihood, his death, his fortunes and misfortunes.”(34)

In the twelfth session of Majlas-ul-Majmah-al-Fiqhi-al-Islam in Makkah on 15th to 22nd Rajab 1410 AH, it was decided; “If the pregnancy is of 120 days then abortion is not legally right, even if medical diagnose shows that the baby is incomplete or immature”. (35) Molana Mojahid Islam Qasmi says; “If a woman is pregnant with adultery this pregnancy is worthy of respect. There is no fault of baby in it so this abortion is not legally right.”(36) It means that abortion is not allowed when a soul is blown in a baby. Otherwise it will be considered the killing of baby. Almighty Allah prohibited the killing of any body by saying;

ولا تقتلوا النفس التي حرم الله الا بالحق- (17:32)

“Don’t kill a living being which Allah has made sacred except for just cause .”

The baby will be allowed to born. After the birth this baby will be referred to that woman who gave birth as the holy prophet (ﷺ) says;

الوالد للفرش وللعامر الحجر- (37)

“The son is for the bed (i.e. the man on whose bed he was born) and stones (despair, i.e. to be stoned to death) for the one who has done illegal sexual intercourse.” (38)

Saving people from this doubtfulness Dr. Mian Aslam Gynecologist says; “In Islam a person is allowed to take any kind of treatment when his life is in danger. It is cleared if a person cannot conceive a child, his / her life is not in danger, so adopting such method of treatment in which doctor himself can non give guarantee of legal or illegal, it should be avoided.”(39)

Conclusion:

From the above discussion it is cleared that Islam does not forbade its followers to utilize modern inventions and techniques like Test tube baby fertilization. But it can be benefited by those infertile couples who really require it to save their family and to continue their lineage. But they can only use their own sperms and eggs for fertilization and it must be implanted in the uterus of wife. If the sperms or eggs of third party is fertilized and implanted in wife’s uterus or some other woman, hired for this purpose is resembles of adultery and can never be allowed .

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