

Test tube Baby

**Shariah ruling about In
Vitro Fertilization**

AUTHOR

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As science and technology progress, we human beings gain much ease and comfort. At the same time, various new questions from the Islamic viewpoint are being raised.

In the last few decades, medical science has progressed exponentially. Many new cures and medical techniques have been invented. One among them is in vitro fertilization (IVF). The layman term for this is test tube babies. This medical technique has raised many questions about paternity, Nikah, inheritance, etc. It is necessary for us to know the answers to these questions.

First, we will talk about the scientific aspects of IVF and then describe the Shariah rulings regarding it.

Why IVF is needed

It is given in Language of Medicine by Davy Ellen that from the ovumry of the woman a tube called fallopian tube goes towards the womb. Anywhere between the end of the second week or the beginning of the fourth week, an ovum is released. After intercourse, it is fertilized by sperm that enter the fallopian tube. Then the fertilized ovum travel through the fallopian tube and then the process of embryogenesis starts.

Due to some reasons, the sperm is not able to enter the fallopian tube and here IVF is used.

The diseases can be on the male side or on the female side.

Diseases on the male side

- (1) The sperm are potent enough but for some reason, the man is not able to perform intercourse and then IVF is used to fertilize the ovum and later implant it in the womb.
- (2) The husband can perform intercourse but does not have enough sperm or if sperm are not potent enough to fertilize the ovum on their own. In this case also, IVF is used.

Diseases on the female side

- (1) If there is some problem with ovulation.
- (2) If the ovaries are absent. In these cases, the ovum and the sperm are combined outside the body in a laboratory and then planted into the womb of the wife.

(3) If there is a problem with the fallopian tubes' patency and the fertilized ovum cannot enter the womb.

Even apart from this, the age and the general health of the women play a pivotal role in conception. The details of this are present on the authoritative website, www.Webmd.com

To perform IVF, the sperm of the husband and the ovum of the wife are collected. To know the Shariah ruling about this, it is necessary to find out what methods are used for this and what the Shariah says about these methods. Do they involve some thing which is expressly prohibited by the Shariah?

Usually, the semen of the husband is gained by masturbation and the wife is given hormones to increase the ovum production and then they are retrieved using a minor surgery. Later on, the fertilized ovum is put back in the woman by a simple procedure.

Be it before a woman only, but this does involve undressing and nudity. Nudity, without a reason deemed to be valid by the Shariah, is prohibited. Does IVF constitute a valid enough reason for the Shariah to permit this? Are the methods used to collect the sperm and the ovum permissible by the Shariah? First we will talk about these questions.

Shariah ruling about masturbation to gain semen

Usually, masturbation is used to gain the semen of the husband. If the semen can be gained by any other method apart from masturbation, like coitus interruptus, then masturbation will not remain permissible.

In coitus interruptus, the male sexual organ is withdrawn just prior to ejaculation. If it is possible to gain semen through this method, then there is no question at all of masturbation still being permissible.

However, if the husband is not able to perform intercourse, which makes using coitus interruptus impossible, then will masturbation be permissible in light of the Shariah?

Clarifications by the Fuqaha in regard to masturbation

In light of the Holy Quran and the Hadith, the Fuqaha (jurists) have declared masturbation as prohibited and punishable offence. A major reason for this is that semen is wasted through this. Although even in coitus interruptus semen is wasted, but in some special situations, it has been ruled to be permissible with a degree of undesirability and in some other cases, it is permissible without any undesirability at all.

As given in Fatawa A'alamgiri, Vol. 2, Pg. No. 412.

Shariah ruling about IVF and masturbation

The reason why masturbation has been declared forbidden is the wastage of semen, but in this case, it is being gained to be brought into use for conception. Thus, here masturbation is being used for a reason contrary to the reason behind its prohibition. If looked at from this viewpoint, masturbation may be permissible with some degree of undesirability.

‘Allama Nujaim Misri (May Allah shower His mercy on him) (deceased 970 Hijri) has written in *Al Bahr Ur Raaiq Sharh Kanz Ud Daqaaq*:

Translation: Even out of Ramadhan, if this act is done only for the sake of pleasure-seeking, then it is not permissible and if the aim is to lull one’s desire, then it is to be hoped there will be no repercussions of this, provided there is no permissible sexual outlet. Also, it is prohibited to seek satisfaction with anybody else’s hand apart from one’s own wife and there should be no nudity. (*Al Bahr Ur Raiq*, Vol. 2, Pg. No. 475)

The same is given in *Tabyeen Ul Haqaaq*, Vol. 2, Pg. No. 16 and in ‘*Inaya Sharh Hidayah*.

Nudity for the sake of gaining the ovum of the lady or to put them back

There is a degree of nudity involved while gaining the ovum of the lady or while putting the fertilized ovum back. Nudity is expressly prohibited in the Shariah. In this context, if we look at the clarifications made by the jurists, we find more than one instance where the Fuqaha have ruled nudity to be permissible to the extent that it is needed. ‘Allama Shamsuddin Sarkhisi (May Allah shower His mercy on him) writes:

Translation: It has been narrated on the authority of Hadhrat Imam Abu Yousuf (May Allah shower His mercy on him) that if a person is extremely weak and through urinary catheterization, administering suppositories and/or enema, the weakness is reduced, then doing this is permissible. This is absolutely correct. This is because weakness is a kind of a disease due to which ultimately the person may end up having serious diseases. (*Mabsut*, Vol. 10, Pg. No. 163)

This is because treating a disease comes under a valid need. Thus, undressing to the extent required is permissible.

‘Allama Alauddin Samarqandi (May Allah shower His mercy on him) (deceased 552 Hijri), the author of *Tuhfatul Fuqaha* has classified some occasions to be valid needs. Just see what he wrote:

Translation: It is not permissible for a woman to see the area between the navel and the knees of another woman excepting in times of need, like if there is a sore or a wound in this area which has to be administered some medicine. If only a man has this knowledge, then this area should be revealed before that man, he may see the area where the sore, etc. is there and as far as possible should not let his gaze go beyond it. (*Tuhfatul Fuqaha*, *Kitab Ul Hazri Wal Ibaha*)

‘Allama Alauddin Kasani (May Allah shower His mercy on him) has written the details about this:

Translation: If a woman has a sore, etc. in such a place that seeing that area is not permissible for a man, then it is permissible for another woman to treat it, provided she knows how to treat it. If no woman knows it, someone should learn it and then treat. If there is no woman who knows the treatment or who can learn the treatment and the life of the diseased woman is in danger or there is a danger of difficulty arising from it or danger of such agony which the woman cannot bear, then there is an allowance for a man to treat her. However, that man should only open the area of the sore and as far as possible should try to limit what he sees. This allowance is only on the basis of a reason deemed to be valid by the Shariah, as the prohibitions of the Shariah are countermanded at the time of a need. (Bada'i Us Sana'i, Vol. 4, Pg. No. 299)

If while retrieving the ovum from the wife or while implanting the fertilized ovum, if there can be an arrangement wherein the wife does not have to reveal her private parts before anyone except the husband, then it is not prohibited at all. However, it would still be Makruh (undesirable).

If it involves undressing before anyone else apart from the husband, then as this is being done for the sake of treatment, then as per the aforementioned details, it ought to be allowed. However, there would still be a degree of undesirability involved.

It is evident from the references mentioned from Tuhfatul Fuqaha and Bada'i Us Sana'i that if treatment involves undressing, then one should take the services of female doctors. If no woman knows this treatment, someone should learn it and if there is no one who knows this and no one is able to learn it, then with caution one can utilize the services of male doctors. Undesirability is still present in all these cases.

Shariah ruling about using IVF for conception

All those situations in the IVF method are impermissible in which the sperm of a man are entered into someone's uterus, other than wife, or the sperm and ovum of the husband and wife are developed in someone else's womb.

There is a Hadith in Sunan Abu Dawood:

Translation of Hadith: It is not permissible for anyone who believes in Allah Ta'ala and the Qiyamah that he should water someone else's field i.e. impregnate someone else apart from his own wife. (Sunan Abu Dawood, Kitab Un Nikah, Hadith No. 2160; Musnad Ahmed, Hadith No. 17453)

Safeguarding the ancestry and parentage is of great importance. This is what distinguishes human beings from animals.

For this reason, the Shariah has not permitted the woman to marry immediately after Khula, divorce, annulment of marriage or death of the husband. The Shariah has decreed Iddat (mandatory waiting period) so that if there was any conception from the previous husband, it should play itself out.

The man and woman between whom sexual relations are impermissible, combining their sperm and ovum is also not permissible, regardless of whether it is done in a lab or whether the sperm is directly introduced into the womb of the woman (artificial insemination).

The pure laws of Islam have declared eating/drinking the left-over of a non-Mahram (an unrelated woman with whom marriage is permissible) woman for the fear that the saliva of the woman will be mixed with the saliva of the man and the man may draw pleasure from this. The Shariah has declared the hair of the woman also to be *Satar* i.e. those body parts which must be covered, so that a non-Mahram man may not see them and draw pleasure from it. The law which has such meticulousness in these matters, how can it allow the sperm and ovum of two unrelated people to be mixed? It will be a severely indecent act and a grave sin.

Juristic clarifications and minutiae - Favor of Fuqaha on the Ummah

Regardless of the prohibitions involved in IVF, the case that the sperm and the ovum of a man and a woman are combined, then the embryo is planted into the womb and there is no intercourse between the man and lady, this has been described by the Fuqaha centuries ago. It is a great favor of theirs on the Ummah. Every Muslim should value the efforts of the Fuqaha and the experts of Islamic law and should be thankful to them.

Minutiae in the canons of Fiqh about situations similar to IVF

In the canons of Fiqh and Fatawa, Fath Ul Qadeer, Al Bahr Ur Raiq, Fatawa A'alamgiri, Haashiya Ash Shalbi Ala Tabyeen Ul Haqaiq, Majma Ul Anhur, Al Muheet Al Burhani and Radd Ul Muhtaar Ala Durre Mukhtaar, etc. the following clarifications are mentioned about situations similar to IVF.

It is mentioned in Al Bahr Ur Raiq of 'Allama Ibn Nujaim Misri (May Allah shower His mercy on him):

Translation: The claim that for paternity of a man to be established, it is not necessary that he should have intercourse, sometimes, a woman herself enters the semen of a man in her vagina and conceives, is true, but it happens very rarely. (Al Bahr Ur Raiq, Vol. 4, Pg. No. 263)

A similar clause is present in Fath Ul Qadeer, Pg. No. 315 and Tabyeen Ul Haqaiq, Pg. No. 276.

The aforementioned clause shows that this case is rare, still if such a situation occurs that the woman enters the semen into her vagina then conception may occur without intercourse as well. In IVF, the sperm and the ovum are combined outside the body and then the embryo is put into the womb.

A similar clause is present in Fatawa A'alamgiri:

Translation: A person had coitus interruptus with his slave girl. She took the semen and stored it somewhere, put it into her vagina and conceived. In this case, in the

opinion of Imam Azam Abu Hanifa (May Allah shower His mercy on him), the parentage of that child will be through that master and the slave girl will be declared his *Umme Walad* (a mother of his child). (Fatawa A'alamgiri, Vol. 4, Pg. No. 114.

This situation is also described in Radd Ul Muhtaar, Kitab Un Nikah, Bab Ul Iddah and Al Bahr Ur Raiq, Vol. 4, Pg. No. 452)

The same situation has been described by 'Allama Abdur Rahman Bin Muhammad, famously known as Shaykhzada (May Allah shower His mercy on him) in Majma Ul Anhur and by Allama Mahmood Bin Ahmed (May Allah shower His mercy on him) in Al Muheet al Burhani.

As per the clauses and clarifications given by the Imams of the Ummah in the canons of Fiqh and Fatawa, IVF is inherently permissible, but to accomplish it, performance of some prohibited acts is inevitable and as such some cases of it are outright forbidden and some are Makruh (undesirable) with some conditions.

Four cases of combining the sperm and ovum of the husband and the wife

Please go through the 4 cases in which the sperm and the ovum of the wife are combined. Their Shariah ruling will be mentioned after that.

- (1) The husband has enough potent sperm, but due to some reason, he is not able to perform intercourse. In this case, the sperm of the husband and the ovum of the wife are combined in the lab and later when the embryo forms, it is implanted in the womb of the wife.
- (2) The husband has potent sperm and is able to perform intercourse. However for some reason, the sperm cannot find their way to the fallopian tube. Then IVF is used.
- (3) If there is some problem with the fallopian tube of the wife like infection, shrinking, patency problems or the like and because of it the fertilized ovum cannot pass into the womb, then IVF is used.
- (4) If there is a problem with the uterus of the wife, then IVF is used.

Details about permissibility of using IVF

These are 4 cases from the medical point of view, otherwise as per Fiqh, these all constitute only 1 case in which due to some problem/disease, the sperm and ovum of the husband and wife are being combined in the laboratory using IVF. Thus, if nothing prohibited is being done, it will not be impermissible. There is limited permissibility for the nudity involved in gaining the semen and the ovum and about using masturbation as has been discussed earlier. However, it is still undesirable and refraining from it is best.

Honesty and integrity of the doctors is indispensable

If the couple cannot conceive and on the advice of a Muslim doctor, they decide to go for IVF, then they should assure themselves that the doctors and everybody else who

are involved in this procedure discharge their duties in the most honest manner. The wife's ovum should be fertilized only with the sperm of her husband and not by any stranger's sperm and similarly the sperm of the husband must not be used to fertilize the ovum of any other lady other than the wife.

There are dangers of parentage and ancestry being muddled because of IVF. Thus, if IVF is to be used, there should be a complete system to ensure that this does not happen. The conditional permissibility should be exercised within the limits of those conditions. Complete honesty and integrity should be exercised.

If masturbation or nudity is resorted to unnecessarily or if there is mixing up of sperm and ovum, it will shred the fabric of modesty and destroys the system of parentage and ancestry.

Impermissible uses of IVF

- (1) If the husband's sperm are not potent enough or if he has no sperm at all and sperm of some other man (not the husband) are used to fertilize the wife's ovum. This is impermissible as a stranger's semen is being put in the womb of somebody else's wife which is forbidden.
- (2) The wife cannot conceive for some reason. The husband's sperm and the wife's ovum are fertilized using IVF and the embryo is planted in another lady's womb. This is also impermissible as the woman in whom the embryo is being implanted is not the man's wife.
- (3) There is some problem with the ovary of the wife. The husband's sperm are combined with another lady's ovum and the embryo is implanted in the wife's womb. This is also impermissible as the lady from whom the ovum is being taken is not the wife of the man. It is not permissible for the woman either to give her consent for her ovum to be fertilized by a stranger's sperm. It is neither permissible for the man to combine his sperm with the ovum of a lady who is not his wife.
- (4) The husband and wife both cannot conceive. Sperm and ovum of two strangers are combined and implanted in the womb of the lady. This is also impermissible. The reason for their impermissibility is clear that the embryo of two strangers is being implanted in the womb of a lady who is herself a stranger.
- (5) The husband does not have potent sperm and the wife has no ovary and physically as well the wife is unable to bear the stress of a pregnancy. Then sperm and ovum of some other man and woman are combined and the embryo is implanted into the womb of the wife or some other woman. This is also impermissible.
- (6) The husband has no potent sperm. The wife has ovaries but cannot bear a child. The sperm of stranger and ovum of the wife are combined and implanted into the womb of another wife. This is also obviously forbidden.
- (7) The wife is not able to bear the stress of pregnancy. The husband's sperm and wife's ovum are mixed and the embryo is implanted into another wife of the same husband. This is also forbidden. Although both the ladies are wives of the same

husband, but when the Shariah has forbidden intercourse with one wife in presence of another, implanting one wife's ovum into another's is all the more forbidden.

In the aforementioned cases, the sperm and ovum of the husband and wife are being implanted in the womb of a third woman whereas the Holy Prophet (Sallallahu alaihi wa sallam) has expressly forbidden it.

Combining the sperm and ovum of strangers is akin to adultery

In the described situation, unrelated (i.e. not of a husband and wife) sperm and ovum are being used, which is impermissible in light of the Hadith. The way sexual relations between unrelated, (i.e. not husband and wife) man and woman and impregnating somebody else's wife constitutes adultery, in the same way mixing the sperm and ovum of a man and woman, who are not husband and wife, has the same ruling with respect to its result. Though on mixing of sperm and ovum in this, the Shariah punishment will not be given, as the punishments given by the Shariah are not given even if there is the slightest of doubt and in this case, physical contact is not found at all, but it has the same ill-effects as adultery. It shreds the fabric of modesty and destroys the system of parentage and ancestry.

Is using IVF changing the creation of Allah?

The creation of Allah cannot be changed at all. As Allah Ta'ala says in Surah Rum:

The nature created by Allah will never be changed. Surah Rum(30:30)

Using IVF is an extraordinary case. This might lead some to think that this is like changing the creation of Almighty Allah or a violation of nature. However this thought is not correct. Changing Allah's creation would be if the features i.e. the face, eyes, nose, ears, etc. are mutilated or disfigured the way it was done in the pre-Islamic days. It would have been a violation of nature when the scientists were 'creating' something on their own. In this case, what happens is that when due to some disease the embryo cannot be formed inside the body, it is being formed outside in the laboratory using IVF and then implanted into the womb of the wife. This is not against nature as the phases of conception, pregnancy, etc. are the same. Neither is a new way of giving birth to children being invented here. The weakness found in the man and/or woman is being compensated for using an advanced medical technique. However, because of prohibited acts, there is some degree of undesirability in this.

The paternity of an illegitimate child

For establishing the paternity of an illegitimate child, there will be different cases. In permissible cases, the wife and the husband will be considered the mother and father of the child. If the sperm of a stranger is put into somebody else's wife and this pregnant lady is married to somebody else, then this is adultery. In this case, the husband of that lady will be considered the child's father and not the stranger whose sperm was used as this comes in the category of adultery and about adultery, the Holy Prophet (Sallallahu alaihi wa sallam) said:

Translation: The child is of the master of the bed i.e. the husband and for the adulterer, there is the stone. (Sahih Bukhari, Hadith No. 6749; Sahih Muslim Hadith No. 3686)

Even if the pregnant lady is not married to anybody else, even then the stranger whose sperm was used will not be considered the father of the child, but will be considered the child of the mother alone, as given in Sunan Abu Dawood about a child born of adultery:

Translation: The child will not be considered the progeny of the adulterer and neither will he inherit from him. (Sunan Abu Dawood, Hadith No. 2267)

There is a Hadith in Sunan Ibn Majah:

Translation: He is a child born of adultery who will be considered to belong to the mother's family whoever they are. (Sunan Ibn Majah, Hadith No. 2851)

Nikah issues of an illegitimate child

Obviously, the man for whom the paternity is established will be considered the father of the child and he will have guardianship over the child as well. The child will inherit from this man and using this paternal relationship, Nikah rules will be decided i.e. those relations with whom this child may marry and those whom this child is prohibited from marrying.

If the sperm of the husband and the ovum of an entirely unrelated woman (not his wife) are mixed and the embryo is implanted in the womb of this man's wife, then even though it is prohibited and forbidden, this man will be considered the father of the child as he is the one whose sperm were used and also the master of the bed. His wife will be considered to be the mother of the child as she has given birth to the child. Allah Ta'ala has declared those women to be mothers who bear the stress of pregnancy and the agony of delivery, as given in the Holy Quran:

Their mothers are only those who have given them birth. Surah Mujadalah (58:2)

The lady who participated in this birth will not be considered the mother of that child, still caution demands that the child must not marry that lady or her progeny. In other impermissible cases, the ruling will remain the same. Unrelated men and women from whom sperm and ovum has been taken will not be considered the parents, as we now know, but there will be a prohibition of marriage. That child cannot marry that person and cannot marry the elders and the progeny of that man/woman, as in Fiqh Hanafi, Nikah prohibitions come into force even with an adulterous relationship.

We pray to Allah Ta'ala that for the sake of the Holy Prophet (Sallallahu alaihi wa sallam), He grant all Muslims chastity and guide all Muslims to perform Nikah and all other affairs of life as per the Shariah.
