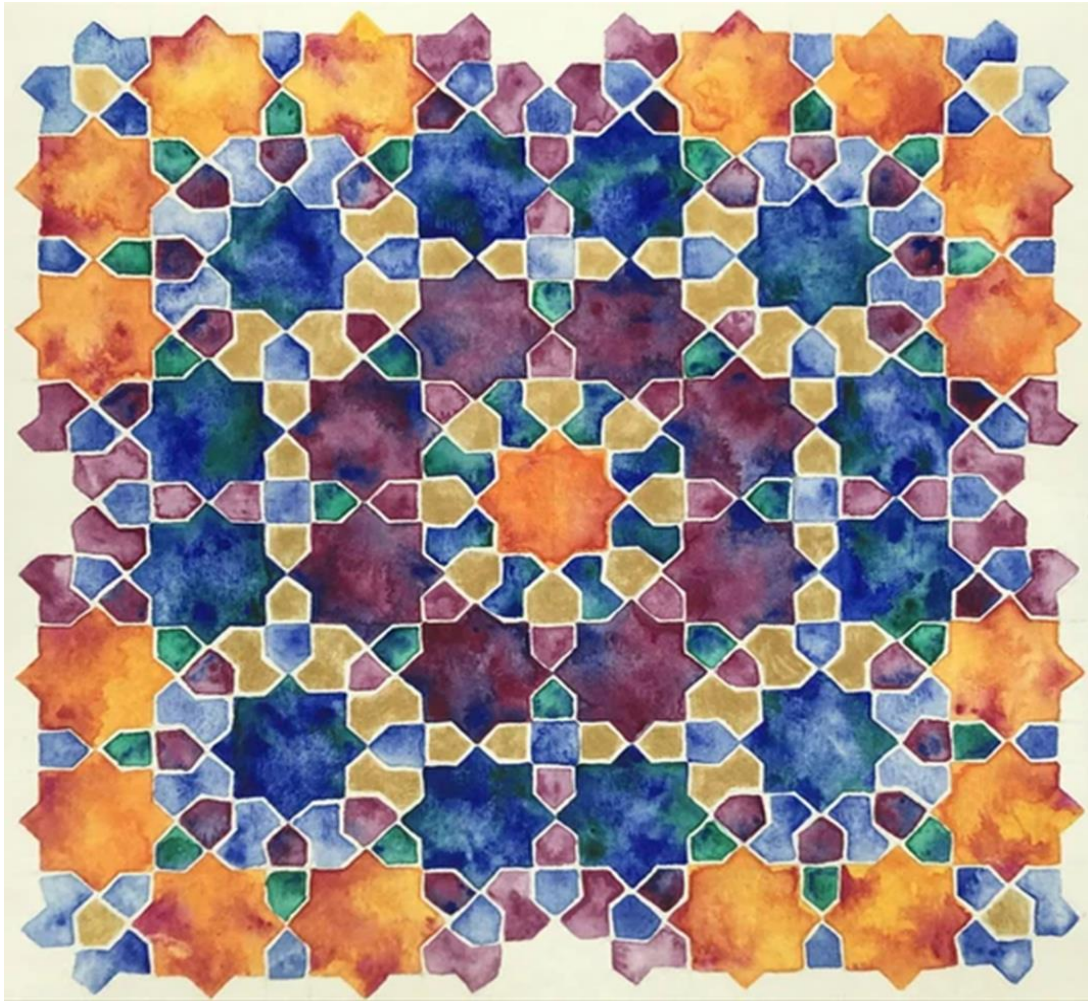


LEGAL TRANSFORMATION IN MUSLIM SOCIETIES

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Legal Transformation in Muslim Societies

The Legal Transformation in Muslim Societies is a quarterly journal offering a platform for intellectually stimulating and critical commentaries and new discourses on issues that shape the law in Muslim societies around the globe. Legal transformation in societies is broadly construed as the processes and forms of reform of legal systems and their rules that reflect and promote values, goals, cultures, customs, structures, interests, and working mechanisms of societies. Legal transformation can involve creating new laws, reforming existing laws, or abolishing unjust or oppressive laws. Legal transformation can also affect the way law is interpreted, applied, enforced, and challenged by different actors and institutions.

Islamic law is not a stagnant system and has continuously transformed reflecting to the changing needs and circumstances of Muslim societies around the globe. There are many factors that influence the transformation of Islamic law including, for example, the general conceptions of Islamic law, the role of customs and cultures in the adaptation and developments in Islamic law, and the intersections of Islamic law with non-Islamic legal systems. Islamic law scholars have different views on different aspects of Islamic law and often debate how it should be interpreted and applied. They place different degrees of emphasis on the primacy of the Qur'an and the Sunnah (the teachings and practices of Prophet Muhammad (PBUH)) as the sources of Islamic law whilst relying in different proportions on consensus (*ijma*) and rational arguments such as analogical reasoning (*qiyas*) or public interest (*maslaha*) as additional sources. Amidst scholarly debates on sources of Islamic law and methods of their interpretation, Islamic law has lived through a long and complex history that spans over fourteen centuries covering different regions, societies, and cultures. As Islamic law has replaced or reformed existing customs in societies that were incompatible with Islamic principles, local customs, traditions and cultures have also influenced the interpretation and progress of Islamic law. When Muslim societies expanded their influence, or when Muslims and Islam reached across different regions and continents, they encountered various legal norms and systems that have different origins, sources, methods, and outcomes. Islamic law has incorporated elements from other legal systems existing in societies when appropriate and it has also reshaped or repudiated element of other legal systems when necessary, giving rise to questions related to rejection, harmonisation, and reconciliation of these legal systems with Islamic law.

The Legal Transformation in Muslim Societies welcomes contributions seeking to assess the existing or develop new legal concepts and categories to deal with issues that arise from the transformation, reform, reinterpretation, re-evaluation, and reconstruction of Islamic law, diversity and pluralism within Islam, and its cross-cultural interactions. We are also interested in new ideas on the implementation and administration of Islamic law in an efficient and effective manner in Muslim societies through transformation of institutions such as politics (*siyasa*), judgeship (*qadayya*), market inspection (*hisba*), consultation (*shura*), law schools (*madradas*), colleges (*madradas al-tayyibah*), etc. as these institutions play important roles in developing Islamic jurisprudence (*fiqh*), codifying legal norms (*usul al-fiqh*), resolving legal disagreements (*fiqh al-madhdhab*), producing legal scholarship (*ijtihad*), and building culture and civilisations (*tamudan*). We also seek contributions on aspects such as challenges and opportunities for modernisation. As modernity brings about social changes in the shape of, for example, technological advancements, industrialisation, urbanisation, secularisation, capitalism, liberalism, and globalisation, it also poses new challenges for Muslims in terms of

preserving their identity, values, and traditions while making positive advancements to new realities, demands, and expectations from within and outside of their communities. Authors may also focus on modernisation as a source of new opportunities for Muslims in terms of promoting their interests, rights, and welfare while contributing to global peace, justice, and development, through innovation, dialogue, and cooperation with other actors.

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Motherhood and Assisted Reproductive Technologies in the Context of Islamic Law

Abdul Hafiz Musa Walusimbi*

Manswab Mahsen Abdulrahman**

Abstract: Islam is a diverse religion that fosters and accommodates technological advances including in the field of medicine, but with certain limitations and constraints. This article examines the intersection of motherhood, Islamic law (Shari'ah), and Assisted Reproductive Technologies (ART) through a comprehensive jurisprudential analysis. With the advancement of medical technologies such as in vitro fertilisation (IVF) and surrogacy, the concept of motherhood has evolved, raising ethical and legitimacy concerns within the frameworks of Islamic law. This article explores key issues such as the permissibility of ART procedures like IVF, sperm and egg donation, surrogacy, and their compliance with Islamic principles regarding marriage, family structure, and inheritance. The research in this article employs a qualitative and analytical approach, combining traditional Islamic jurisprudential (*fiqh*) methodologies with contemporary legal and ethical analysis. The article argues that Shari'ah rules differ significantly between the contexts of ART within a legitimate marital relationship and an illegitimate relationship. The article concludes by offering practical recommendations for Muslim scholars, legal experts, and medical professionals. These recommendations aim to guide all stakeholders in making informed decisions that consider contemporary health developments while upholding Islamic principles and values.

Keywords: Motherhood; Assisted Reproductive Technologies; In Vitro Fertilisation (IVF); Islamic Jurisprudence

I. INTRODUCTION

Motherhood, as a social institution, establishes specific rights and responsibilities for mothers towards their children. For a long time, the concept of motherhood has been primarily associated with childbirth and subsequently with breastfeeding (foster-mother). However, this perspective shifted on November 10, 1977, when Assisted Reproductive Technology transitioned from experimental practices to actual implementation. Dr Steptoe and Dr Edwards achieved a significant milestone by successfully fertilising the egg of Mrs. Leslie Brown with the sperm of her husband, John Brown. This groundbreaking procedure led to the pregnancy and birth of the first test-tube baby, Louisa Brown, on July 25, 1978.¹ The term 'motherhood' is derived from 'mother,' symbolizing the origin and foundation of all life This is reflected in the Almighty's statement:

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¹ Simon Fishel, 'First in vitro Fertilization Baby—This is How it Happened' (2018) 1 (110) Elsevier Inc. on behalf of the American Society for Reproductive Medicine 8.

“And indeed, it is, in the Mother of the Book with Us, exalted and full of wisdom”.²

In technical terms, motherhood refers to a system where the mother’s role takes precedence over the father’s in areas such as authority and where lineage or inheritance is traced through the mother. A mother is defined as both the immediate relative who gave birth and the more distant ancestor who gave birth to her. The term “mother” extends to every female in one’s lineage, including mothers, grandmothers, and paternal grandmothers, no matter how far back in the lineage.³ In Islamic jurisprudence, motherhood is classified into two types: motherhood by lineage and motherhood by breastfeeding. The evidence for motherhood through pregnancy and childbirth is found in the Almighty’s statement:

“We have commanded people to be good to their parents: their mothers carried them, with strain upon strain, and it takes two years to wean them.”⁴

Another verse confirms:

“None can be their mothers except those who gave birth to them.”⁵

Additionally, Allah affirms that:

“We have commanded man to be good to his parents: his mother struggled to carry him and struggled to give birth to him – his bearing and weaning took a full thirty months.”⁶

These verses, by connecting motherhood to childbirth, demonstrate that motherhood is established by God’s creation of the child in the mother’s womb and the subsequent act of giving birth.⁷

In this regard, The Prophet (peace be upon him)⁸ decided regarding one who was treated as a member of a family after the death of his father, to whom he was attributed when the heirs said he was one of them, that if he was the child of a slave-woman whom the father owned when he had intercourse with her, he was included among those who sought his inclusion, but received none of the inheritance which was previously divided; he, however, received his portion of the inheritance which had not already been divided; but if the father to whom he was attributed had disowned him, he was not joined to the heirs. If he was a child of a slave-woman whom the father did not possess or of a free woman with whom he had illicit intercourse, he was not joined to the heirs and did not inherit even if the one to whom he was attributed was the one who claimed paternity, since he was a child of fornication whether his mother was free or a slave.⁹ The rationale behind the evidence is that the Prophet, determined that motherhood is affirmed as soon as proof of childbirth is established, regardless of whether it took place

² Qur'an, Surat Az-Zukruf (The Ornaments of Gold) 43:4.

³ Abu Abdallah Mohammad bin Ahmad Al-Qurtubi, *Al-Jami` Al-Ahkam Al-Qur'an* (in Arabic) [*The Whole of the Rulings of the Qur'an*] vol 5 (1st edn, Beirut: Muasasat al-Manahil, n.d.) 105.

⁴ Qur'an, Surat Luqman (Luqman) 31:14.

⁵ Qur'an, Surat Al-Mujadila (The Pleading Woman) 58:2.

⁶ Qur'an, Surat Al-Ahqaf (The Wind-Curved Sandhills) 46:15.

⁷ Abu Qassim Mahmoud bin Omar Al-Zamahsahri, *Al-Kashshaaf'an Haqa'iq at-Tanzil* (in Arabic) [*The Scout in the Facts of Revelation*] vol 4 (3rd edn, Beirut: Dar Al-Kitab Al-Arabi 1987) 484.

⁸ On every occasion in this article where reference to Prophet/Messenger Mohammad appears, the words “Peace Be Upon Him” shall be assumed.

⁹ Abdullah ibn Abd ar-Rahman ad-Darimi, *Sunan ad-Darimi* (in Arabic) [*Collection of Hadith by ad-Darimi*] vol 4 (1st edn, Saudi: Dar Al-Mughni 2000) Hadith no, 3154, 1999.

within a lawful relationship. Based on this evidence, the jurists have affirmed that motherhood is proven by childbirth. The famous Jurists like Al-Kasani for instance, said:

“Once the lineage is established through the woman, it is binding and cannot be denied in any way, as it is confirmed by the fact of birth, and there is no way to negate it”.¹⁰

In another passage, he said:

“The child’s lineage to his mother is binding in every case of birth, whether it is within a legitimate or illegitimate relationship”.¹¹

Ibn Hazm likewise stated:

“The child is attributed to the woman... because, as stated, the child is associated with her whether legitimate or illegitimate, as long as she carried him.”¹²

Another way to establish motherhood is through breastfeeding. Breastfeeding occurs when a woman’s milk, or any of her milk, enters a child’s through suckling.¹³ Motherhood is confirmed through breastfeeding, as indicated by the words of Allah the Almighty:

“And your mothers who breastfed you and your foster sisters”.¹⁴

Nevertheless, the Mother of the Believers, Aisha, may Allah be pleased with her, reported:

“Among what was revealed in the Qur’an were ten known instances of breastfeeding that forbade marriage. These were later abrogated by five known instances of breastfeeding, and the Messenger of Allah, may Allah bless him and grant him peace, passed away while they were among what was recited from the Qur’an”.¹⁵

Respectively, Jabir bin Zaid also narrated from Ibn Abbas, may Allah be pleased with them, that the Prophet, said regarding Hamza’s daughter:

“She is not permissible for me. What is forbidden by breastfeeding is also forbidden by lineage. She is my brother’s daughter through breastfeeding”.¹⁶

In this regard, this article further seeks to answer the following research question: How does Islamic law interpret and regulate motherhood in the context of Assisted Reproductive Technologies (ART), and what are the implications for maternal rights and child lineage? Having established the research question, we now present the hypothesis of this article as

¹⁰ 'Ala' al-Din al-Kasani, *Bada-i' as-Sana-i' fi Tartib ash-Shara-i'* (in Arabic) [*The Wonders of Crafts in the Arrangement of Laws*] vol 6 (2nd edn, Beirut: Dar Al-Kutob Al-Arabī 1986) 255.

¹¹ al-Kasani (n 10) 243.

¹² Ibn Hazm Ali bin Ahmad Al-Andalus, *al-Muhallā bi'l Athār* (in Arabic) [*Islamic Jurisprudence by Ibn Hazm*] vol 10 (1st edn, Beirut: Dar Al-Kutuob Al-Ilmiyah 1988) 142.

¹³ Muḥammad ibn Aḥmad al-Ramlī, *Nihayat al-muhtaj ila sharh al-Minhaj fi al-fiqh ala madhab al-Imam al-Shafī* (in Arabic) [*The explanation of the book of Al-Minhaj*] vol 7 (1st edn, Beirut: Dar Al-Fikr 1984) 172.

¹⁴ Qur'an, Surat An-Nisa (The Women) 2:23.

¹⁵ Malik bin Anas, *Muwata* (in Arabic) [*Jurisprudence book by Malik*] vol 4 (1st edn, Emirate: Muasasat Al-Zaid bin Sultan lilamal Al-Kheiriyah wa Al-Insaniyah 2004) 877.

¹⁶ Muḥammad ibn Ismā'īl al-Bukhārī, *Sahih al-Bukhārī* (in Arabic) [*Collection of Hadith by al-Bukhārī*] vol 2 (3rd edn, Beirut: Dar Ibn Kathir 1987) Hadith no, 2502, 935.

follows: Islamic jurisprudence recognises motherhood through various means, far beyond the traditional consideration including ART while maintaining that maternal rights and child lineage are fundamentally linked to the very traditional understandings of motherhood affiliations. This analysis also demonstrates that, despite advancements in technology, the principles of Islamic law provide a framework that upholds the sanctity of maternal rights and the integrity of lineage, addressing contemporary ethical dilemmas and offering guidance for medical practitioners in the field. This article significantly contributes wider to the existing structures of Islamic jurisprudence by exploring the intersection of motherhood with ART. It will enhance the understanding of how traditional Islamic legal principles can adapt to contemporary technological advancements, thereby enriching legal discourse in both Islamic and secular contexts.

The following discussion in this article is structured into four parts: after introduction Part II provides an overview of Shari'ah law as it relates to motherhood in the context of Islamic law, including a brief discussion on ART, and analyse the impact of the uterus on a child's genetic characteristics. Part III outlines the methodology, explaining the comparative approach adopted to examine the differences and similarities between various schools of Islamic thought, such as Hanafi, Maliki, Shafi'i, and Hanbali, regarding ART and motherhood. This section will analyse the differing interpretations and rulings within these schools, highlighting the diversity of opinions in Islamic jurisprudence. Finally, Part V concludes the article with a brief summary and offers insights on how to develop comprehensive legal frameworks that address the complexities surrounding motherhood and ART within the context of Islamic law.

II. LITERATURE REVIEW

A. Concept of the Motherhood

Motherhood is confirmed by the act of giving birth, which is a tangible reality that can be attested by those who witness it. As childbirth typically takes place with women/midwives present or any other interested parties, jurists concur in acknowledging their testimony commonly accepted¹⁷ to establish this fact.¹⁸ Although the jurists have agreed on attesting women's testimony to establish the occurrence of birth, but also, they have completely differed regarding the threshold number of required witnesses, resulting in three divergent views of schools of thought.

The Hanafis,¹⁹ along with Al-Layth bin Sa'd from the Malikis,²⁰ held that the testimony of one midwife is sufficient to prove birth. This is also the view of the Hanbalis.²¹ The supporters of the first opinion referenced the following: Al-Awza'i narrated from Al-Zuhri, who said:

“The Sunnah affirms the permissibility of women's testimony in matters that are exclusive to them, such as childbirth and women's physical conditions. A single

¹⁷ While not excluding the possibility or validity of men's testimony in relevant cases.

¹⁸ Fakhr al-Din al-Zayla', *Tabyin al-Haqā'iq Sharh Kanzu Ad-Daqaiq* (in Arabic) [*Facts of Explanation to the book of Ad-Daqaiq*] vol 3 (1st edn, Egypt: Matba' Al-Amiriyah 1897) 44.

¹⁹ Abdulrazak bin Humam, *Al-Musanaf Abdulrazak* (in Arabic) [*Collection of Hadith by Abdulrazak*] vol 8 (2nd edn, Beirut: Al-Maktab Al-Islamī 1983) 333.

²⁰ Muwaffaq ad-Dīn Abū Muḥammad Ibn Qudāmah, *Al-Mughni* (in Arabic) [*Jurisprudence book*] (2nd edn, Egypt: Dar Hajr 1992) 10, 161.

²¹ Manṣūr Ibn Yūnus Al-Buhūti, *Al-Rawd al-Murbi' Sharh Zad al-Mustaqni'* (in Arabic) [*Rawdat Al-Murabba' an explanation of Zad Al-Mustaqni'*] vol 3 (1st edn, Saudi: Maktab Al-Riyadh Al-Haditha 1970) 432.

midwife's testimony is sufficient for the early signs of pregnancy, while two women are needed for other matters."²²

According to the opinions of the Hanafis,²³ Malikis,²⁴ and narration from Imam Ahmad held that the testimony of two women are required to prove birth.²⁵ They based their argument on the following evidence: It was reported that Ali bin Abi Talib, (may Allah be pleased with him), and Judge Shureih accepted the testimony of a midwife. The proponents of the second opinion contended that two aspects are considered in testimonies: the number of witnesses and their masculinity. If one of these aspects is unattainable, the other is still required, hence the necessity of having two women as witnesses.²⁶

The Shafi'i held that birth cannot be established without the testimony of four women.²⁷ The proponents of the third opinion referenced the hadith narrated by Abu Hurairah, may Allah be pleased with him, in which the Messenger of God, said:

“The testimony of two women is equal to the testimony of one man”.²⁸

Also, they cited the following verse from the Qur'an:

“But if there are not two men, then one man and two women”.²⁹

Imam Al-Shafi'i stated:

“When Allah Almighty permitted testimony, He concluded it with the minimum requirement of two witnesses or one witness and two women. He placed two women in the position of one man when He allowed their testimony. Therefore, if Muslims permit the testimony of women in matters where men are absent, it is not permissible. Hence, two women stand in place of one man. If they follow this ruling, then only four women witnesses are permissible”.³⁰

Thus, exceptionally indicates the permissibility of using a substitute in place of the original. It has been established that the Messenger of Allah, acknowledged the testimony of a single woman to prove breastfeeding. Moreover, many births occur daily with only one midwife present. Therefore, it is more reasonable to conclude that childbirth can be proven by the testimony of one woman/midwife if she is the sole witness where it is necessary to arise.

²² Abdulrazak (n 19) 329.

²³ Ali ibn Abdu Salam, *Al-Bahja fi Sharh at-Tuhfa* (in Arabic) [*Al-Bahja explanation of at-Tuhfa*] vol 1 (1st edn, Beirut: Dar Al-Kutoub Al-Ilmiyah 1998) 381.

²⁴ Badrudin Muhammad bin Ahmad, *Al-'Inī* (in Arabic) [*Jurisprudence book*] (1st edn, Beirut: Dar Al-Kutoub Al-Ilmiyah, 2000) 5, 636.

²⁵ Al-Buhūti (n 21) 432.

²⁶ al-Zayla' (n 18) 209.

²⁷ Muhammad ibn Idrīs al-Shāfi', *Al-Umm* (in Arabic) [*Jurisprudence book by Shafi*] vol 6 (2nd edn, Beirut: Dar Al-Fikr 1983) 268.

²⁸ Muhammad ibn Isa al-Tirmidhi, *Jami` at-Tirmidhi* (in Arabic) [*Collection of Hadith by Tirmidhi*] vol 4 (1st edn, Beirut: Dar Al-Gharb Al-Islamī 1998) 306.

²⁹ Qur'an, Surat An-Nisa Al-Baqarah (The Cow) 2: 282.

³⁰ Al- Shāfi' (n 27) 268.

B. Motherhood in Light of Assisted Reproductive Technologies

There are two opinions regarding artificial insemination, which can be clarified through with the help of a scenario. For instance, the procedure is carried out within the confines of a legitimate marital relationship. In the case of artificial insemination, a couple in a Muslim polygamous set up may resort to this procedure when one wife's ovaries are capable of producing eggs, but her uterus is unable to carry a pregnancy due to illness or other reasons. Alternatively, she may be able to conceive, but doing so would pose a serious risk to her life. In such cases, the second wife donates her womb to carry the pregnancy, which has been inseminated with the husband's sperm and the first wife's egg, so the child belongs to the first wife.

Contemporarily, in terms of establishing motherhood in these such cases, jurists hold differing opinions:

1. Advocated by Professor Mustafa Al-Zarqa, Dr Yusuf Al-Qaradawi, Muhammad Fawzi Fayd Allah, and Professor Muhammad Abbas, this view holds that motherhood is attributed to the provider of the ovum. They argue that the volunteer (surrogate mother) who carries the pregnancy should be considered a breastfeeding mother (foster) by priority since the foetus develops more in her body than an infant would from the milk of a wet nurse.³¹
2. On the contrary, Sheikh Badr Metwally Abdul Basit, Sheikh Abdullah bin Zaid Al Mahmoud, and others argue that motherhood is established for the volunteer (surrogate mother) who carries the embryo.³²

Authentically, natural motherhood, according to Islamic texts, relies on the presence of both the embryo and the uterus, which are mentioned together in most Islamic texts. The Qur'anic verses indicate that the creation of man after Adam, peace be upon him, begins at the sperm stage. Accordingly, Allah says:

“Indeed, We created man from a mixed sperm-drop”.³³

The term “mixed sperm,” as agreed upon by jurist commentators as interpreted by jurist commentators, refers to the combination of male and female gametes.³⁴ In this context, the gamete represents a complete human being, with only growth and development remaining. Conversely, the Qur'an highlights the significant role of the womb in the development of the embryo, as it passes through essential stages necessary for the completion of creation. God Almighty declares:

“And indeed, He created you in stages”.³⁵

This is further elaborated in His words:

³¹ Yusuf Al-Qaradawi, *Fatawa Al-Muasirah wa Al-Usra Al-Muslimah* (in Arabic) [*Contemporary Fatwas on the Muslim Family*] vol 3 (2nd edn, Kuwait: Dar Al-Qalam 2002) 513.

³² Abdallah bin Zaid, ‘Al-Hukm Al-Iqna’ fi Ibtal Al-Talqih Al-Sina’ (in Arabic) [‘Persuasive Ruling on Invalidating Artificial Insemination and so-called Embryo Transfer’] (1984) 1 (2) *Majalat al-Fiqh Al-Islamī* 320.

³³ Qur'an, Surat Al-Nisa (The Women) 76:2.

³⁴ Ibn Jarir al-Tabari, *Jāmi' al-bayān 'an ta'wīl āy al-Qur'ān* (in Arabic) [*The Comprehensive Statement in the Interpretation of the Qur'an*] vol 24 (1st edn, Syria: Muasat Al-Risalah 2000) 88.

³⁵ Qur'an, Surat Al-A'raf (The Heights) 71:14.

“Then We created the sperm-drop into a clinging clot, then We created the clot into a lump of flesh, then We created the lump of flesh into bones, then We covered the bones with flesh, then We developed it into another creation. So blessed be God, the best of creators”.³⁶

He also states:

“So indeed, we created you from dust, then from a sperm-drop, then from a clot of flesh”.³⁷

Followed by:

“Then from a lump of flesh, formed and unformed”.³⁸

Furthermore, in the Almighty’s declaration:

“Then we made him a sperm-drop in a firm lodging place”.³⁹

And in the verse:

“He creates you in the wombs of your mothers, creation after creation, within three layers of darkness”.⁴⁰

In this context, the sperm-drop is the foundation of the child, and the womb is not just an incubator; it serves as the firm lodging place where the most critical stages of human creation occur, including the shaping of the being and the breathing of the soul. This process transitions the creature from a state of pure existence to a life characterised by human qualities.

These phrases clearly indicate the importance of the womb and its vital role in the stages of creation. Its capacity increases hundreds of times during pregnancy to accommodate the growing foetus. If it were merely a vessel, such expansion would be in vain. In conclusion, the texts of the Qur’an do not weight either the egg or the uterus in the creation of man. The complete human being is equally devoid of both.

C. Motherhood in Light of Scientific Facts

Scientific evidence has confirmed that human creation begins with the union of male sperm and female egg. After fertilisation, the egg undergoes successive cell divisions, forming a shape that resembles a ball. This leads to the final stage of the sperm phase, known as the germ ball, referred to as the blastula or blastocyst.⁴¹ Wrinkles and indentations begin to form, and it grows into a shape resembling a chewed substance. At this stage, the buds of the hands, legs, head, chest, and abdomen appear, and most of the internal organs are formed. Despite these

³⁶ Qur’an, Surat Al-Mu’minin (The Believers) 23:14.

³⁷ Qur’an, Surat Al-Hajj (The Pilgrimage) 22:5.

³⁸ Qur’an, Surat Al-Hajj (The Pilgrimage) 22:5.

³⁹ Qur’an, Surat Al-Mu’minin (The Believers) 23:13.

⁴⁰ Qur’an, Surat Az-Zumar (The Troops) 39:6.

⁴¹ Ibrahim Mustafa, *Al-Mujam Al-Wasit* (in Arabic) [*Intermediate Complex*] vol 1 (1st edn, Egypt: Dar Al-Daawa, n.d) 63.

developments, it retains its appearance as a mass resembling chewed meat. The subsequent phase, known as the “chewed” stage, involves further creation, followed by the formation of bones, which are eventually covered by flesh.⁴²

It is established, based on scientific facts, that human life is considered to begin after the completion of four months from the moment the foetus is formed in the mother’s womb. Prior to this point, life is not classified as fully human, even though it exhibits some characteristics of basic life (cellular life), such as growth, nutrition, involuntary movement, and other vital processes that modern medicine has identified by modern medicine using advanced techniques.⁴³ The harmony between the constants of modern science and its innovative technologies with the descriptions in the Holy Qur’an regarding the stages of foetal development is undisputed. The fertilised egg does not constitute a complete human formation until the embryonic cell embeds itself in the folds of the uterine wall, initiating the stage known as “the clot.”

Regarding the effect of the uterus on the genetic characteristics of the child, there are two perspectives as mentioned above. The proponents of the first opinion emphasise the influence of the egg on the genetic characteristics of the child, giving preference to the mother who provides the egg. This is scientifically accepted without dispute. However, scientific facts also establish that a remarkable biological, chemical, and physiological interaction occurs between the foetus and the mother carrying it. There are many mysteries regarding foetal inheritance in the womb, and the full understanding of how these genes function remains largely undiscovered.⁴⁴

Scientists have confirmed that the mother’s blood, which is connected to the foetus, carries all her genetic components. The foetus is influenced by the mother’s genes, particularly if she has a genetic disease. Furthermore, the health condition of a person throughout their life is significantly shaped during the nine months in the mother’s womb. Consequently, the characteristics of the foetus may also be affected by the surrounding environment within the womb.

The genetic similarity between the egg donor and the child is not considered when determining the beginning of human life as this similarity may exist without a natural relationship. It is the child’s soul that grants them the abilities and qualities by which he acquires the description of a human being.⁴⁵ This perspective is supported by the fact that when God Almighty ordained the beginning of human life through the breathing of the soul, He also decreed its end with the soul’s departure.

Based on the above, motherhood, according to both Islamic law and scientific evidence, is shared between the egg donor and the woman who carries the pregnancy (egg acceptor/receptor). Motherhood is considered incomplete from both perspectives: the egg donor establishes a connection of formation and heredity, while the pregnant woman

⁴² Mohamad Mostafa Nassar, ‘Embryology in the Qur’an: A description of the Mudghah Stage’ *Islam Compass* (n.d.) <<https://islamcompass.com/embryology-in-the-quran-a-description-of-the-mudghah-stage/#gsc.tab=0>> accessed 20 January 2025.

⁴³ Yasin Mohammad Naim, ‘Bidayat Hayat Al-Insaniyah wa Nihayatuhu fi Dhau An-Nusus Al-Shari’ah wa Ijtihadat Ulama Al-Muslimin’ (in Arabic) [‘The Beginning and End of Man in Light of the Texts of Islamic Law and the Efforts of Muslim Scholars’] (1985) 2 (41) *Majalat Al-Sharia wa Al-Dirasat Al-Islamiyyah-Kuwait* 150.

⁴⁴ *ibid.*

⁴⁵ *ibid.*

establishes a connection of pregnancy and birth. The child is thus connected to both women: through formation and inheritance, rooted in the egg, and through pregnancy and birth, originating from the womb.

Accordingly, custody and care are therefore determined for one of the two women based on primary considerations and the best interests of the child, as well as preventing harm. Therefore, motherhood is more appropriately attributed to the woman who carried the child for the following reasons:

1. **Stronger Evidence:** The evidence supporting motherhood for the woman who carried the child is stronger than that for the egg donor.
2. **Possession in Dispute:** The newborn is physically with the woman who carried the pregnancy during the time of the dispute. When the evidence is equal, preference is given to the one in possession. As Al-Sarakhsi stated:

“If a boy is in the care of a woman, and witnesses testify that he is her son, and both parties claim lineage, judgment favours the one in possession, as the arguments are equal, so the side of possession is preferred.”⁴⁶

3. **Paternity Completeness:** Paternity is completed through pregnancy, childbirth, and breastfeeding—all of which are associated with the woman who carried the pregnancy. Moreover, the uterus has a greater impact on the child than the biological material from which the child was formed.⁴⁷
4. **Child’s Best Interests:** The best interest of the child is better served by the woman who carried the pregnancy, as she can provide natural nourishment through breastfeeding. In contrast, the egg donor would rely on alternative feeding methods, which the newborn might reject, causing harm.
5. **Complications of Uterine Pregnancy:** It is possible for the woman carrying the pregnancy to conceive through intercourse with her husband before the fertilised egg is implanted in her uterus. In such cases, one of the pregnancies could fail, and it would be difficult to determine whether the surviving child came from the fertilised egg or the natural conception, as stated by the Islamic Fiqh Council.⁴⁸
6. **Social Consequences:** Attributing motherhood solely to the egg donor could lead to complex social issues, where some women provide eggs while others endure the hardships of pregnancy and labour. This could create confusion, as a woman could theoretically have multiple children in the same year, leading to a potential social crisis.

Another possible scenario is where the procedure is carried out within the confines of an illegitimate marital relationship. This gives rise to five possible situations discussed below.

1. First Situation

The first situation involves fertilising a married woman’s egg with her husband’s sperm, and then implanting the fertilised egg into the womb of another married woman (a surrogate). The

⁴⁶ Shamsudin Al-Sarakhsi, *Al-Mabsout* (in Arabic) [*Book of Jurisprudence*] vol 6 (1st edn, Egypt: Matba’ Al-Saadah 1320) 410.

⁴⁷ Dalkhawaz Abdallah, ‘Istijar Al-Rahim fi Mizan Al-Shar’a wa Al-Qanun Al-Wadh’ī’ (in Arabic) [‘Surrogacy in the Light of Islamic Law and Positive Law’] (2009) 3 (141) *Journal of Tainda* 59.

⁴⁸ Islamic Fiqh Academy, ‘The Second Resolution on Artificial Insemination and Test Tube Babies’ (1983) 1 (2) *Journal of the Islamic Fiqh Academy* 329.

wife may choose to have someone else carry the foetus either for comfort, to maintain her physical appearance, or because she wishes to avoid the burdens and pains of pregnancy and childbirth. In such cases, she hires another woman to carry the foetus on her behalf. There is no legal objection to the fertilisation of a wife's egg with her husband's sperm, as it occurs within the boundaries of a legitimate marital relationship. However, the implantation and development of the fertilised egg in the womb of another married woman (surrogacy) is prohibited by all contemporary jurists.⁴⁹ Because they do not share the same man as a husband, which could result in a mixture of genealogies such that the married surrogate could be fatal in the process of surrogacy. In addition, the hardship experienced by the wife, including depression or psychological distress, is not considered a valid legal excuse for engaging in this prohibited act. Such difficulties are viewed as a general test that she, like others, must face with faith, patience, and persistence in supplication, following the example of the Prophets and the righteous.⁵⁰ Furthermore, If the egg donor disputes with the married surrogate, motherhood is favoured for the egg donor. Even if the surrogate's claim is supported by a midwife's testimony or by the fact that breastfeeding the child may serve the child's interest, the egg donor's claim is stronger. Her claim is based on the fact that fertilisation occurred within a legitimate marital relationship, ensuring that the child will grow up in a family environment filled with parental affection. This familial bond is considered more important than the benefit of natural breastfeeding from the surrogate.

2. Second Situation

Insemination of a married woman with donor sperm Artificial Insemination by Donor (AID) This method involves inserting the sperm of an unrelated man, referred to as a donor, into the vagina of a married woman. It requires mutual consent and voluntary agreement between the spouses, with the identity of the donor concealed from the couple and the couple's identity concealed from the donor. Doctors resort to this method when the husband is infertile, using another man's sperm to fertilise the wife's egg either internally or externally to fulfil their desire for a child. A similar method involves inseminating an unmarried woman with sperm from a donor stored in a sperm bank, without any marital relationship between the two parties.⁵¹ This situation does not differ from adultery, which is forbidden in Shari'ah law.

3. Third Situation

The third situation is inseminating a foreign woman's egg with the husband's sperm, then implanting the fertilised egg into his wife's womb. This method is used when a wife's ovaries have been removed or are unable to produce eggs, but her womb is healthy and capable of carrying a fertilised egg. In such cases, the couple seeks an egg donor. The donor's egg is inseminated with the husband's sperm, and the fertilised egg is then implanted into the wife's womb. It is important to note that in this method, the natural genetic connection between the child and the pregnant mother (the wife) is absent in terms of formation and heredity. However, there is a connection through pregnancy and birth, as the child grows in her womb and is influenced by her during gestation and delivery.⁵²

⁴⁹ Islamic Fiqh Council (Fourth Decision of this Session, in the year 1986) 329.

⁵⁰ Hoggett and others, *Law and Society, Cases and Materials* (1st edn. U.S.A: Lexis Law Publishing 1991) 33.

⁵¹ America Society for Reproductive Medicine, 'Assisted Reproductive Technology' <<https://www.asrm.org/advocacy-and-policy/media-and-public-affairs/oversite-of-art/>> accessed 10 August 2024.

⁵² *ibid* 3-15.

4. Fourth Situation

The fourth situation is fertilising a foreign woman's egg with donor sperm, then implanting the fertilised egg in the uterus of a married woman. In this scenario, the couple seeks assistance from others to achieve parenthood. They search for a woman to provide an egg and a man to provide sperm. Fertilisation occurs externally, after which the fertilised egg is implanted in the wife's uterus.⁵³ This method is typically employed for two reasons: i) The wife's ovaries are either damaged or removed, preventing her from producing eggs, while her uterus remains intact; and ii) The husband is sterile and unable to father children. This situation considered equivalent to adultery, which is forbidden in Islamic law.

5. Fifth Situation

The fifth situation is Fertilising a donor's egg with the sperm of a foreign man, and then implanting the fertilised egg in the womb of a volunteer woman (surrogate mother). In this scenario, the couple may choose this method if they are infertile and the wife is unable to carry a fertilised egg. They seek both sperm and egg from donors, allowing fertilisation to occur externally. Subsequently, they find another woman willing to carry the fertilised egg on the condition that she delivers the child to them. In terms of motherhood, there are three parties involved: the woman who carries the child, the egg donor, and the sperm donor. However, motherhood is not established for the infertile wife, as she is not connected to the child in terms of heredity, formation, pregnancy, or birth. The fee paid to her does not grant her legal recognition as a mother; this arrangement is prohibited and contradicts unethical and rather contributes to a social dilemma. Thus, the concept of motherhood primarily revolves around the egg donor and the woman who carries the child. Motherhood is not attributed to the egg donor either, because while the child is biologically created from her egg, her intention was to gain financially or through the donation of the egg. Therefore, it is more likely that motherhood is established for the surrogate mother, as she has a significant connection through pregnancy and birth, and the child's best interests are better served by her.

III. METHODOLOGY

This research paper has employed a comprehensive and multi-faceted methodology to analyse the concept of motherhood within the frameworks of Islamic laws, particularly in relation to ART. A thorough literature review has been conducted to gather existing scholarly works, books, articles, and fatwas related to motherhood, Islamic jurisprudence, and ART. This review has included both classical and contemporary sources to provide a broad perspective on the topic. The research in this article has utilised qualitative methods to analyse the legal texts of Islamic jurisprudence, including the Qur'an, Hadith, and scholarly interpretations (*fiqh*). This analysis has focused on how these texts address issues related to motherhood and reproduction, including any rulings on ART. A comparative approach has been adopted to examine the differences and similarities between various schools of Islamic thought, such as Hanafi, Maliki, Shafi'i, and Hanbali, regarding ART and motherhood. This will involve analysing differing interpretations and rulings within these schools by highlighting the diversity of opinions in Islamic jurisprudence. The research in this article has also engaged in ethical frameworks within Islamic laws that pertain to reproductive technologies. The final stage of the methodology involves synthesising the findings from the literature review, qualitative analysis,

⁵³ *ibid* 3-15.

and case studies. Based on this synthesis, recommendations will be made for scholars, practitioners, and policymakers regarding the legal and ethical remedy for motherhood in the context of ART within Islamic law.

IV. DISCUSSION AND RESULTS

This section presents the findings from the research on motherhood in the context of Islamic law and ART and discusses their implications within the broader framework of Islamic jurisprudence. The results are categorised into key themes derived from the qualitative analysis, literature review, and case studies. These subjects include prohibition by kinship, the right to breastfeed, and the right of inheritance. Each theme explores critical aspects of motherhood as interpreted within Islamic legal principles and how they intersect with modern reproductive technologies.

Contemporary Muslim jurists have differed regarding the ruling on scenario one⁵⁴ resulting in two opinions. Some jurists permitted it under the following conditions:⁵⁵

1. Complete caution must be exercised to prevent the mixing of sperm.
2. There must be a genuine necessity, meaning it should only be resorted to if the first wife is unable to bear children or if her pregnancy would cause significant harm to her or the foetus.
3. The procedure must have the consent of the womb's owner.
4. The private parts should only be exposed to a Muslim female doctor. If one is unavailable, then to a non-Muslim female doctor, followed by a Muslim male doctor, and finally, a trustworthy non-Muslim male doctor. This has been the opinion reached by the Fiqh Council in its seventh session.⁵⁶

On the other hand, a group of jurists ruled against the permissibility of this practice, including His Eminence Sheikh Abdul Aziz bin Baz, Sheikh Metwally Abdul Basit, Sheikh Muhammad bin Abdullah Al-Sabil, Dr. Mustafa Al-Zarqa, and others. Nonetheless, the Islamic Jurisprudence Assembly refrained from issuing a ruling on the permissibility of this practice in its subsequent session. Additionally, the fatwa from the "Reproduction in Light of Islam" symposium stated that it is prohibited if a third party is involved, whether through semen, an egg, a foetus, or a womb.⁵⁷

Those who argue for the permissibility of this practice cite rational evidence, such as the fact that both women are married to the same man, ensuring unified paternity, maintaining family cohesion, and avoiding the mixing of lineages for either the husband or the wife.⁵⁸ They also argue that this practice does not contradict the texts, principles, or general rulings of Shari'ah. It is not comparable to adultery or lesbianism, which are forbidden, and it is not subject to the

⁵⁴ The procedure is carried out within the confines of a legitimate marital relationship. In the case of artificial insemination, a couple in a Muslim polygamous set up may resort to this procedure when one wife's ovaries are capable of producing eggs, but her uterus is unable to carry a pregnancy due to illness or other reasons.

⁵⁵ Buriqa' Sufyan, *An-Nasab wa mada Tathir Al-Mustajadat Al-Ilmiyyah* (in Arabic) [*Lineage and the Extent of the Impact of Scientific Developments*] (1st edn, Saudi Arabia: Dar Al-Kunuz 2007) 447.

⁵⁶ Decisions of the Council of the Islamic Fiqh Academy of the Muslim World League, Fifth Decision, Seventh Session, held in the year 1985 AH.

⁵⁷ To the Islamic Fiqh Council, and the Fourth Decision of this Session, in the year 1986.

⁵⁸ Arif Ali Arif, 'Al-Umm Al-Badilah au Al-Rahm Al-Mustajarah Ruyah Al-Islamiyah' (in Arabic) ['Surrogate Mother or Rented Womb, an Islamic Perspective'] (1999) 5 (19) *Majalat Al-Fikr Al-Islam Al-Muasir* 98.

jurisprudential principle that “the basic ruling regarding private parts is prohibition.”⁵⁹ Instead, it serves a legitimate interest for a wife who is naturally unable to bear children.⁶⁰ However, this reasoning is not without legal objections. From one perspective, Islamic rulings are based on the unity of both paternity and motherhood and in this case, the unity of motherhood is in dispute. While from another perspective, they claim that this practice does not conflict with the texts, rules, or general principles of Shari’ah is incorrect. Therefore, the application of both the Qur’anic verse and the jurisprudential rule is not valid in this context. One must be cautious before deeming it permissible based solely on a superficial similarity to the verse and the rule.

Those who argue that this practice is prohibited rely on the Almighty’s statement:

“But whoever seeks beyond that, then those are the transgressors”⁶¹

Enjoyment is permissible as long as it remains within the bounds of the marital relationship, but anything beyond that is forbidden. It is permissible to insert the husband’s sperm into his wife’s womb, as this falls within the scope of the Almighty’s statement:

“Except with their wives”⁶²

However, implanting a fertilised egg from one wife into the womb of another is impermissible. Even though fertilisation involves the husband’s sperm and the egg of the first wife, placing it in the womb of another wife falls outside the circle of permissibility.

After presenting the evidence for both opinions and discussing the rationale behind the first opinion, it is more likely that this practice is prohibited based on the following considerations:

1. Although the lineage is established on the husband’s side, other legal inconsistencies lead to the conclusion that this practice is prohibited. There is no need to expose the private parts of the second wife, as she is not the one in need of motherhood; the permissibility is specific to the sick woman herself and no one else.
2. Lineage is a right for both the father and the mother, and establishing motherhood in this context is fraught with doubts. The consideration of lineage must encompass both parties.
3. The child born through this practice faces a lifetime of uncertainty regarding his true mother, leading to psychological distress. This situation has given rise to the term “dispersed motherhood,” which highlights the emotional turmoil the child may experience.

Based on scenario two,⁶³ it is not permissible for a woman to implant a fertilised egg from another woman into her womb, regardless of whether the egg was fertilised by her husband or

⁵⁹ Jalaludin Al-Suyuti, *Al-Ashbah wa'l-Nazai'r* (in Arabic) [*Similarity and Correspondence*] (1st edn, Beirut: Dar Al-Kutuob Al-Ilmiyah 1983) 61.

⁶⁰ Buriqa' (n 55) 454.

⁶¹ Qur'an, Surat Al-Mu'minin (The Believers) 23:7.

⁶² Qur'an, Surat Al-Mu'minin (The Believers) 23:6.

⁶³ (i) Fertilizing the egg of a married woman with her husband’s sperm, then implanting the zygote in the womb of another woman. (ii) Fertilizing a married woman with donor sperm. (iii) Fertilizing a foreign woman with the husband’s sperm, then implanting the zygote in the womb of his wife. (iv) Fertilizing the egg of a foreign woman with donor sperm, then implanting the zygote in the womb of a married woman. (v) Fertilizing an egg from a donor with the sperm of a foreign man, then implanting the zygote in the womb of a woman who volunteers to deliver the child to a couple.

another man, or if the egg belongs to a non-relative. Contemporary jurists unanimously agree that this practice is forbidden due to the involvement of a third party, which creates uncertainty about the child's true mother. Is the real mother the egg donor, who provides the child's genetic makeup, or the surrogate mother, who nurtures the child in her womb until birth? This ambiguity leads to the prohibition of the practice. The Islamic Research Assembly in Egypt and the Council of the Islamic Fiqh Assembly in Makkah have affirmed this prohibition. They argue that the use of a surrogate womb, whether by donation or for a fee, is forbidden, and this is the consensus of most contemporary scholars. Evidence for this includes the Quranic verse:

“And those who guard their private parts, except from their wives or those right hands possess, for indeed, they will not be blamed. But whoever seeks beyond that, and then those are the transgressors.”⁶⁴

This obligation applies equally to men and women. Just as the private parts are protected from unlawful use, so too must the womb be safeguarded. The womb is seen as an extension of a woman's private parts and may only be lawfully used within a legitimate marital framework. The use of a surrogate womb violates this principle, as it involves a woman carrying a pregnancy that is not from her lawful husband, thus disrupting the purity of lineage. Furthermore, there is the potential risk of mixing lineages. If fertilisation fails and the woman becomes pregnant through intercourse with her husband, there may be confusion about the true parentage of the child. Additionally, the procedure exposes a woman's private parts to medical personnel, which is only permissible in cases of legal necessity. Even if there is a necessity for the egg donor, this does not apply to the surrogate, as she does not need motherhood. In addition, the process of implanting a fertilised egg in the womb of a surrogate woman, if the wife is unable to carry it, contradicts the verse of Almighty Allah (SWT):

‘He creates whatever He wills. He blesses whoever He wills with daughters, and blesses whoever He wills with sons, or grants both sons and daughters to whoever He wills, and leaves whoever He wills infertile.’⁶⁵

Lastly, the widespread harm and potential complications resulting from this practice further justify its prohibition. In terms of the consequences of motherhood of ART, the following points can be summarised:

A. Prohibition by Kinship

Proving lineage results in the extension of prohibitions based on kinship. This means identifying categories of women with whom marriage is forbidden for both the son and the father. These women are referred to as the forbidden women. The term “forbidden women” refers to those whose marriage is not permissible. It is named as such because the ruling is attributed to the individuals and their intended characteristics. The prohibition pertains not to the individuals themselves but to the act of marrying them, as this is the primary concern. Furthermore, the prohibition does not imply unsuitability but rather the sinful and invalid nature of marrying these individuals. The following evidence establishes the prohibition against certain categories of women: The Almighty states:

⁶⁴ Qur'an, Surat Al-Mu'minin (The Believers) 23:5-7.

⁶⁵ Qur'an, Surat Ash-Shu'ara (The Poets) 26:49-50.

“And do not marry those women whom your fathers married, except what has already occurred. Indeed, it was an immorality, hateful, and an evil way. Forbidden to you are your mothers, your daughters, your sisters, your paternal aunts, your maternal aunts, your brother’s daughters, your sister’s daughters, your foster mothers, your foster sisters, your wives’ mothers, your stepdaughters who are in your guardianship from among your women to whom you have gone in—but if you have not gone in to them, there is no blame upon you—and the wives of your sons who are from your loins, and that you marry two sisters at the same time, except for what has already occurred. Indeed, Allah is Forgiving and Merciful.”⁶⁶

Another evidence is Hadith of the prophet Mohammad (peace be upon him) as previously mentioned which states about Hamza’s daughter:

“She is not permissible for me (in marriage). What is forbidden by breastfeeding is also forbidden by lineage. She is my brother’s daughter by breastfeeding”.⁶⁷

Finally, the Muslim *ummah* (community) has unanimously agreed on the prohibition of those mentioned in the verses regarding women. Imam al-Tabari states:

“All of those whom Allah Almighty has named and made clear their prohibition in this verse are forbidden, and it is not permissible for any man to marry them, as per the consensus of the entire nation. There is no disagreement among them regarding this, except in the case of the mothers of our women whose husbands have not consummated the marriage with them; there is some disagreement among a few of the early Companions about their marriage permissibility”.⁶⁸

In conclusion, based on the discussion, it is clear that the kinship between the child and his mother is established through assisted reproductive technology, while the prohibition between them is established through lineage and breastfeeding.

B. The Right to Breastfeed

Islam has made breastfeeding permissible and established it as forbidden by marriage, under conditions that provide alternative parental care. As such, proof of motherhood results in the establishment of the right to breastfeed for the child, and it creates a sanctity between the infant and the wet nurse, as well as between her descendants and ancestors. The prohibition also extends to the stallion—the owner of the milk from which the child was breastfed—because he is the cause of milk production. The owner of the milk becomes the father of the child, and his descendants, whether through the wet nurse or others, are forbidden to him, as are his ancestors and relatives. This is supported by a narration from Aisha, may God be pleased with her, who said:

“Aflah, the brother of Abu al-Qu’ays, asked permission to enter, but I refused to grant him permission until I asked your permission. The Prophet, may God bless him and grant him peace, asked, ‘What prevented you from giving your uncle permission?’ I replied, ‘O Messenger of God, the man was not the one who breastfed me; it was the

⁶⁶ Qur'an, Surat An-Nisa (The Women) 4:22-23.

⁶⁷ Al-Bukhārī (n 16) 170.

⁶⁸ Muḥammad ibn Jarīr ibn Yazīd al-Ṭabar, *Jāmi‘ al-bayān ‘an ta’wīl āy al-Qur’ān* (in Arabic) [*The Interpretation of Verses of the Qur’an*] vol 8 (1st edn, Beirut: Muasasat al-Risalah 2000)143.

wife of Abu al-Qu'ays who breastfed me.' He said, 'Give him permission, for he is your uncle. May your right hand be covered with dust'.⁶⁹

The prohibition is established for the infant and extends to his children, even if they are descendants. However, it does not apply to his brothers and sisters or to his parents, even if they are descendants. It is permissible for marriage between them and the ancestors and descendants of the wet nurse, as well as her husband and his ancestors and descendants. In this regard, the scholar Ibn Hajar stated:

“The wisdom behind this is that the reason for the prohibition is what separates the woman and her husband from the child, which is the milk. If the infant is nourished by it, it becomes a part of them; thus, the prohibition extends between them, unlike the relatives of the infant”.⁷⁰

In the context of ART, the right of breastfeeding extends to surrogacy.

C. The Right to Inheritance

Islamic law has determined the shares of the heirs based on the strength of their kinship to the deceased. The kinship of the parents is considered a close relative kinship; the father and mother are the reasons for adding a human being to life. Therefore, the law has given weight and significance to their presence in the estate, ensuring that their shares are established and that they are not subject to deprivation.⁷¹ Thus, the right of inheritance is established between the child and his mother through Assisted Reproductive Technology, in accordance with the legal shares determined for each of them.

V. CONCLUSION AND RECOMMENDATION

In conclusion, the concept of motherhood, as explored within the frameworks of Islamic laws and ART, emerges as a profound social institution that establishes not only the rights of mothers over their children but also the corresponding responsibilities of the children towards their mothers. Traditionally, motherhood has been closely associated with childbirth and breastfeeding, which have long defined the essence of maternal roles in society. While Islamic law recognises the significant contributions of both the egg and pregnancy in the creation and formation of the foetus, although the weight of jurisprudential preference leans towards pregnancy and birth. This preference is rooted in the visibility of these processes and the ease of providing evidence through testimony, which plays a crucial role in legal determinations regarding motherhood. Moreover, when conflicts arise concerning the sources of motherhood, the primacy of pregnancy and birth is upheld to safeguard the child's interests, particularly in matters of breastfeeding and custody. This prioritisation highlights the commitment within Islamic law to ensure the well-being of the child, reinforcing the vital role that a mother plays throughout the child's early life.

As ART continues to evolve, the insights gained from this comprehensive jurisprudential analysis can contribute to ongoing discussions about the legal and ethical dimensions of

⁶⁹ Al-Bukhārī (n 16) 163.

⁷⁰ Ibn Hajar al-ʿAsqalānī, *Fathu Al-Bari* (in Arabic) [*Explanation of Sahih Al-Bukhārī*] vol 9 (1st edn, Beirut: Dar Al-Maarifah 1959) 141.

⁷¹ Manswab Mahsen Abdulrahman, *Theory and Practice in Islamic Inheritance* (1st edn, Mombasa: Al-Ihsaan Foundation Kenya 2024) 100-105.

motherhood, emphasising the need for a balanced approach that honours both traditional values and modern scientific advancements. Finally, Islamic jurisprudence typically forbids practices that disturb the natural structure of family relationships, such as the use of sperm or egg donors outside of marriage, as this raises concerns about lineage and the possibility of unlawful relationships. The involvement of third parties, whether through surrogacy or donation, is closely examined under Sharia, with a focus on safeguarding the marital bond and protecting the rights of the child, mother, and father. The research recommends that scholars, policymakers, and legal practitioners engage in a collaborative effort to develop comprehensive legal frameworks that address the complexities surrounding motherhood and ART within the context of Islamic law. These frameworks should reflect the evolving nature of family dynamics and reproductive technologies while safeguarding the rights of all parties involved.