

Chapter VII

THE REPRODUCTIVE REVOLUTION

Alternative Reproduction

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(Alternative Reproduction)

Just as the smallest part of water is made of neither hydrogen nor oxygen alone but of both in chemical combination, the unit of humanity is not man alone or woman alone but of both together in unison... hence the unit of humanity is the family. As God decreed, the family institution should be a stable structure, for it is the fulfilment of the two halves of humanity seeking one another, as well as the vessel in which the future generation is conceived, carried, born and raised. The pairing off of a man and a woman is not a chancy or a haphazard relation of touch and run or of unscrupulous change of partners. In Islam, as it is in all God sent religions, this pairing off is a serious event that has to be documented and protected by what in Islamic law is called the tie of marriage or the marriage contract with all its legal consequences of mutual rights and responsibilities of husband and wife vis a vis one another and vis a vis their progeny. It is under the protective umbrella of the marriage contract that the children should be born, for in Islam the right to legitimacy is a basic right and every person has the right to be the legitimate child of their parents. Violation of this closely knit arrangement can run amock with human society... and following upon the example we quoted of hydrogen and oxygen in chemical combination to form water, one sometimes wonders what would happen if this chemical tie were broken and hydrogen and oxygen in all the water in the world broke loose, the one being very inflamable and the other helping combustion. We have already emphasized the sanctity of the marriage tie, the betrayal of which is tantamount in Islamic law and moral code to high treason.

As previously pointed out, marriage has a dual function: the first is the unison between two halves to make one unit, with all the pleasures and blessings of this physical and spiritual unison. The second is procreation.

In actual life the two functions are inseparable for the one is the product of the other. As a matter of fact God has confined both functions to within the institution of marriage. On the one hand God says in the Quran:

“Nor come near to adultery . . .” (17:32)

And on the other the Quran says:

“And out of your *consorts* He created children and grand children for you, and provided for you out of his bounty. Will they then believe in vain things and be ungrateful to God’s favours?”(16:72)

This implies that the children’s source has to be the consorts, in the Arabic language unequivocally meaning husband and wife.

Infertility

Unfortunately some marriages are barren. Some cases of infertility do respond to medical treatment, while others are not, and remain infertile . . . all in accordance with God’s plan:

“To God belongs the dominion of heavens and earth. He creates what He wills. He bestows females upon whom He wills and bestows the males upon whom He wills. Or He couples them in males and females and He leaves barren whom He wills. For He is All-Knowledgeable All-Powerful.” (42:49-50)

To have a progeny is a great blessing from God. The pursual of a remedy for infertility is therefore quite legitimate and should not be considered as rebellion against the fate decreed by God. Prophets of God who were childless incessantly asked their Lord to give them children, and the Quran tells us time and again about the keen prayers of Abraham and of Zakariya in this respect.

“This is a recital of the mercy of your Lord to His servant Zakariya. Behold! He cried to his Lord in secret praying: O my Lord . . . infirm indeed are my bones and the hair of my head does glisten with whiteness . . . but never am I unblest, my Lord, in my prayer to you. Now I fear what my relatives (and colleagues) (will do) after me: But my wife is barren . . . so give me an heir as from yourself. (One that) will (truly) represent me and represent the posterity of Jacob . . . and make him, my Lord, one with whom You are pleased . . . (His prayer

was answered). O, Zakariya . . . We give you good news of a son: His name shall be Yahia. On none by that name have We conferred distinction before.” (19:2-7)

In another verse the Quran makes another reference to Zakariya:

“And (remember) Zakariya, when he cried to his Lord: O, my Lord! Leave me not without offspring . . . though You are the best of inheritors. So We listened to him, and We granted him Yahya. We cured his wife’s (barrenness) for him. These (three) were ever quick in emulation in good works. They used to call on Us with love and reverence, and humble themselves before Us.” (21:89-90)

Sarrah, the wife of Abraham, remained barren for a long time during which she convinced her husband to take Hagar who begot Ismail for him. When she was well into old age she was rewarded. The angels visiting them brought her in advance the happy news of she begetting Isaac . . . and she was thrilled for the surprise:

“(When his angel guests did not eat), he (Abraham) conceived a fear of them. They said: fear not. And they gave him glad tidings of a son endowed with knowledge. But his wife came forward (laughing) aloud: she smote her forehead and said: a barren old woman! They said: Even though, has your Lord spoken and He is full of wisdom and knowledge.” (51:28-39)

If it is legitimate to yearn for something and ask God for it, it is without doubt as legitimate to pursue every legitimate means that might fulfil it.

Attempts to cure infertility are therefore not only permissible, but are even a duty so that a couple may contribute to the preservation of the race and supplying society with useful human elements to take their place in the future generation. But the treatment of infertility should by no means trespass outside legitimacy as ordained by God. Modern times, however, have witnessed a progressive degree of Godlessness and heedlessness of his prescribed ways. Large segments of humanity have prescribed to atheism, and those who acknowledge God deny him being in control of their lives. In our age of scientific growth and spiritual atrophy, science is inclined to be self-worshiping and scientists wish to send whatever can be done into the arena of widespread application, without scrutiny or heed to the far-reaching moral and spiritual consequences. Amongst the sequelae is a real threat to the very existence of the family institution . . . since it has become possible to remove sex out of marriage and to remove reproduc-

tion out of marriage. Modern reproductive techniques have been devised, and as far as they solve the problem of many barren marriages they have to be praised and saluted, but the expansion of their application put them in conflict with Islamic principles in some situations as we hope to point out in this review.

Artificial Insemination

A. Artificial Insemination using Husband's Semen (AIH).

If the husband does not have living spermatozoa in his semen this approach is obviously hopeless. But when the husband has normal spermatozoa but for some reason is not able to deposit them inside the genital tract of the wife, artificial insemination might solve the problem. It may also be that the seminal ejaculate lacks the proper concentration of live sperm, so that it becomes necessary to repeatedly collect the first wave of every ejaculate which is the richest in sperms, and prepare a satisfactory concentrate to be used. This can be kept in cold storage, to be drawn from at the time of ovulation each cycle and deposited by the doctor inside the genital tract until hopefully a pregnancy results. From the Islamic point of view, this procedure is acceptable as long as it remains between husband and wife, provided—however—that it is carried out during the span of their marriage. Its acceptability is based on the fact that the mating takes place within an authentic marriage contract, the sperm would—hopefully—fuse with the ovum under same, and the pregnancy (and baby) is ensured the right of legitimacy with its subsequent legal rights: all in truth and without falsification. That the procedure is only permitted within the span of marriage, is due to the fact that the marriage contract is broken by death or by divorce. As a matter of fact the woman under such circumstances has the right to become another man's wife. The famous French court case is an illustrative example. The husband died but he had already deposited semen preserved in cold storage in a semen bank. The widowed wife, for sentimental reasons, requested to be availed of artificial insemination by her deceased husband's semen. The semen bank refrained from answering her request, and she had to go to court. The court ruled in her favour and she was inseminated by her late husband's semen (insemination, however, failed to produce a pregnancy). Such a court ruling would be unacceptable by Islam . . . for both insemination and potential pregnancy are not within the boundaries of a valid marriage contract. A conceiv-

ed baby would thus have been denied its basic right of legitimacy.

B. Artificial Insemination by a Donor's Semen (AID)

In this situation the husband is in fact infertile and does not possess semen of his own that is ever capable of producing a pregnancy, as in men whose semen contains no spermatozoa and there is no known treatment that can correct their defect. Resort is then made to semen given by a fertile donor. A 'semen bank' carries out the function of obtaining seminal ejaculates from healthy fertile donors, and preserving them at a very low temperature (cryopreservation). The donors are medically checked to exclude diseases communicable by semen (lately AIDS—aquired immuno deficiency syndrome—has been added to the check list). The donors and recipients remain unknown to each other and written consent is taken from the recipient and her husband. Although the procedure can put an end to the problem of the fertile wife of an infertile husband, it stands unacceptable to Islam. From the point of view of jurisprudence, Islamic law would not consider this practice as adultery since it lacks the legal specifications (the crime of adultery legally materialises if four unblemished witnesses testify to have witnessed the complete act of coitus entailing introduction of penis into vagina), but morally it is considered nearly as sinful, and is legally punishable but not with the punishment of adultery. The child is not the fruit of the marriage contract and therefore robbed of its right to legitimacy. The woman and her husband are agreeable, it is true... but the right of the child to legitimacy is not theirs to pamper with. The procedure also entails the lie of registering the baby as the son or daughter of a man who is not the real father. It leads to confusion of lines of genealogy whose purity is so dear to Islam. It lies to the child about, and denies him or her, the knowledge of their real father. It absolves the real father of being responsible for his own "flesh and blood". It enhances the chances of inadvertent brother-sister marriages in a community. It violates the Islamic legal system of inheritance. And on top of that, it would play havoc with the science of population genetics trying to deduce modes of inheritance by analysing family pedigrees.

An interesting development of the AID technology is the current ethical debate concerning the right of the unmarried woman to procure a pregnancy by artificial insemination. The new 'morality' has played an effective role in social acceptability and accomodation of 'uniparent families' as they are called. At the beginning it was perhaps an act of compassion towards the poor little girl who finds herself stuck with a baby whose father is either unidentifiable or unwilling to bear responsibility for his tilth or his

crop. It was perhaps a little beyond the limits of imagination that 'uniparentage' should be sought per se, for its own sake. One would wonder if it meant any substantial difference for the unmarried female seeking artificial insemination whether to get it by artificial or perhaps more easily by natural insemination. In any case the procedure is not Islamically acceptable for much of the reasons already given.

In-vitro Fertilization

This is the technique used if there is a mechanical obstruction preventing access of sperm to the ovum, usually in the form of block of both fallopian tubes that could not be corrected by surgery. At the time of ovulation (natural or hormonally induced), ova are aspirated from their little follicles in the ovary, either under direct vision through the laparoscope or under ultrasound screening; in the latter case the aspirating needle may approach the ovary through the abdominal wall, the bladder wall or the vaginal wall, depending on how best to reach the ovary and avoid adhesions or other pathology. The ova are subjected to husband's sperm in vitro in the hope that one or more will be fertilized. If this occurs, the fertilized ovum is maintained in special medium to proceed to divide, and at the four or eight cell stage, seen under the microscope, this early embryo is aspirated and pumped into the uterus of the woman through the natural route. Up to three or four embryos may be so deposited at a time if available, hoping that one or more will be successful in clinging to, then implanting into, the lining membrane of the uterus, and proceeding to grow like any natural pregnancy. Since Steptoe and Edwards hit the news in 1978 when Louise Browne was born as the first "test tube!" baby, several thousand babies have been conceived and born using the same technique and the number of involved centers is ever increasing.

There is no doubt that this technique is a breakthrough in the management of infertility and is to be praised for the joy and happiness it brought to thousands of households, and for the existence of the many boys and girls who would otherwise have never been. The follow up so far has not shown any harmful effects on the children or increase of the congenital abnormality rate above that of the general population. The sex-ratio is also the same as for the general population (although the technique entails an opportunity for sex selection).

The Islamic ruling on in-vitro fertilization is no exception to its rulings

on mating and reproduction in general, that have been already referred to. The procedure is Islamically acceptable and commendable but only if it solely involves husband and wife and if it is performed during the span of their marriage. The fusion of sperm and ovum (a step further of the sexual intercourse between man and woman) should take place only within the marriage contract. If the woman becomes widowed or divorced then the marriage contract has come to a conclusion, and stored semen of the husband would be alien to her.

The triangle formed by 'father-mother-child' should only be three sided, without interjection of other parties. Equivalent to the donation of alien semen is the donation of alien ovum...again because a pregnancy would result from two parties (the contributors of sperm and ovum) not bound by a marriage contract.

Surrogacy

One form of a surrogate mother is the woman solicited by a married couple to be impregnated by the husband's semen, in case the wife cannot get pregnant. The surrogate mother will carry the baby through the antenatal period, and after birth hands the baby over to the soliciting couple. In this case the baby will be the child of the husband and the surrogate mother, but biologically alien to the wife.

The other form of surrogacy is resorted to if husband and wife can provide sperm and ovum, but for some reason the wife cannot (or does not want to?!) carry the pregnancy, as in cases of absent or defective uterus (or may be at some future development cannot afford to be encumbered by a pregnancy interfering with her career or affecting the beauty of her physique?!). In such a case in-vitro fertilization is carried out using husband's sperm and wife's ovum, but the resulting embryo is deposited into the uterus of the surrogate mother, and after birth she is to hand the baby over to the soliciting couple.

As surrogacy became practicable, Steptoe and Edwards had to modify their terminology, using the term 'embryo replacement' instead of 'embryo transfer'...the new term signifying that the embryo is in fact replaced into its real mother, whereas "transfer" more appropriately befits the new procedure of lodging the embryo into an alien woman.

The existence of the need created a market for surrogacy, and the existence of a market further augments the need. Agencies for surrogacy

sprang up one after another, operating on purely business grounds. Investment in motherhood apparently became a prosperous business, the agency mediating between infertile couples and women prepared to lease their uterus for the duration of pregnancy in lieu of the expenses of antenatal care and a total fee at the end. The details of the transaction were prepared by legal experts, the medical procedures were carried out by highly qualified medical personnel and the laws of the land had nothing against the new activity for legislation usually lags behind emerging developments.

In the brief history of surrogacy interesting incidents have been reported. There were occasions when the surrogate mother acquired a deep feeling towards the fetus during the course of pregnancy, and by the time of birth a fetal maternal bond had been already established and she would not give away the child whom she conceived, carried, delivered and is now ready to suckle.

The opposite situation is reported when the neonate was found to have a congenital abnormality. This time it was the surrogate who was keen to enforce the signed contract and obligate the soliciting couple to take the baby. The soliciting couple would refuse, and accuse the surrogate of having sex with another man achieving the pregnancy, and that the new born baby was not their own embryo that had been lodged into her but failed to implant.

One woman carried the embryo of her sister, and literature on medical ethics exhibited debates on who is mother and who is aunt. On another occasion an ovum was taken from a daughter, fertilized by her step father's sperm, carried by a surrogate, and the born child was taken by her mother and step father.

In the majority of cases, however, the pattern is that a married couple would hire a woman to carry their embryo, and at birth give it back, usually in lieu of a pre-agreed fee.

For the first time in human history the human female accepts to get pregnant with the prior meditated intention of giving away her child. And since this is usually done for money, "motherhood" for the first time in human history is being reduced from a "value" to a price. If this practice becomes widespread, the effects on the cohesion of successive generations might prove devastating, causing the already felt generation gap to become an unbridgeable rift of indifference and even animosity. If social norms are ever to accommodate the status of children as "commodities", subject to "buy-sell" rules, other values than parenthood will certainly dwindle, leaving little room to time-honoured values as positive emotion, love, family

ties, mutual compassion and tender loving care within the family unit.

Surrogacy is not acceptable to Islam, again on the premises that pregnancy should be a fruit on the tree of a legitimate marriage. In the symposium on "Reproduction in the Light of Islam" (Islamic Organization of Medical Sciences, Kuwait, 24-27 May, 1983), attended by medical and juridical muslim scholars, the technology of in-vitro fertilization and embryo replacement (into genetic mother) or transfer (into surrogate mother) was discussed at length. The consensus was the acceptability of the technique within a family structure of husband and wife, during the span of their marriage, and without the intrusion of another party, be it sperm, ovum, embryo or uterus.

Although considered to be illegitimate pregnancy, the question of surrogacy opens another front of debate, as to who should be considered the mother of the child: the one who gave the ovum or the one who carried the baby through pregnancy and gave birth to it. In other words who has the legitimate claim on the crop: the farmer or the seed merchant. On the one hand a woman gave the genetic material, whereas the other received a few cells that weighed a fraction of a particle of dust and recruited her body systems for its nourishment and growth over nine months of biological and psychological interaction until born some seven pounds in weight: out of her own body.

The separation of the "womb" relation from the "ovary" relationship is a new event, and because old jurists did not address this question contemporary jurists have to. The Quran gives clear guidance that we will quote, but let us first make some linguistic remarks.

In the Arabic language the terminology of "parents" is derived from "natality". The verb "walada" means to give birth to. . . "father" is "walid" and "mother" is "walida", the feminine form. Both parents are "walidan or walidayn", the form for two persons. Both "walid" and "walida" would mean the person who gave (or produced) the birth of a person. Although God knows that we are related to both the ovary and the womb of our mother, the reference in the Quran is always made to the womb relation, and it was repeatedly stated in the Quran that our mothers are those (women) who gave birth to us:

"None can be their mothers except those who gave them birth."
(58:2)

"And we have enjoined on man (to be good) to his parents (his walidayn), in travail upon travail did his mother bear him and in years

twain was his weaning . . . (hear the command): Show gratitude to me and to your parents (your walidayn). To Me is your final goal.”
(31:14)

“We have enjoined on man kindness to his parents (walidayn) . . . in pain did his mother bear him and in pain did she give him birth. . .”
(46:15)

“The mothers (walidat) shall give suck to their offspring . . .”
(2:233)

By terminology and by description the mother is the one who gives birth. If we consider an imaginary case of bigamy (a husband married to two wives), an ovum being taken from one wife, fertilized with husband's sperm, and carried-till-birth in the womb of the second wife: the procedure is also condemned because it entails the carrying in pregnancy of an alien seed, which is outside the marriage contract binding the husband and his second wife. At any rate, the child will belong to the woman who carried it and gave it birth.

The Womb Relation:

The word ‘womb’ or ‘uterus’ in the Arabic language is ‘rahim’ (plural is ‘arham’). In Arabic, ‘rahim’ refers to the anatomical organ inside the pelvis, but it also refers to a ‘value’ based on blood relatives and the tie of compassion that binds them. Of the same derivation is ‘rahma’ which means compassion, and amongst the names of God are “Rahman” and “Raheem” meaning “The Compassionate; The Merciful”.

“And those related by ‘arham’ (kindred by blood) have prior rights against each other in the Book of God. . .”
(8:75)

“O mankind! Reverence your Lord who created you from a single person, and created—of like nature—his mate, and from them twain scattered (like seeds) countless men and women. Reverence God, through Whom you demand (mutual) rights. And (reverence) the ‘arham’ (wombs) (that bore you): for God ever watches over you”.
(4:1)

“Then, is it to be expected of you if you were put in authority, that you may do mischief in the land and tear (the ties) of your ‘arham’ (wombs)?”
(47:22)

The ‘rahim’ (womb) is a value and a link to be heeded and respected.

As the prophet said:

“The ‘rahim’ (womb) is suspended from the throne of God, saying:
He who heeds me will be heeded by God . . . and he who cuts me off
will be cut off by God”.

(the two sheikhs)

Adoption

To take a child that lacks parentage and raise it up like a son or daughter catering for their physical, educative and spiritual needs is a great charity in Islam. The prophet himself was orphaned while a child, and was raised by his grandfather Abdul Muttalib and then by his uncle Abu Talib.

The way of adoption as practised in the West, however, is not the Islamic way. It usually entails the lie of registering the child as your own, and such lie is not permitted, whether given to the child or finding its way to official documents.

In pre-Islamic days, the Arabs used to practise adoption the same way as the contemporary West. They gave their name to the adopted child. When the adoptive father died the adopted child inherited like a real child. When the adopted son got married, his wife was considered daughter in law, and if divorced she was forbidden to his father to marry.

The prophet himself had an adopted son called Zayd. His father was called Haritha, but because of the adoption he was called Zayd ibn (son of) Mohammad. Zayd had been a slave but the prophet saw to his freedom. He lived in the prophet's household and loved the prophet so much that when his father Haritha, wanted to take him, he chose to stay in the company of the prophet, so the prophet adopted him. Out of love and appreciation, the prophet saw to his marriage to Zainab bint Jahsh, the prophet's own cousin.

Later on, this form of adoption became forbidden. Quranic revelation carried the new legislation:

“God has not made for any man two hearts in his (one) body. Nor has He made your wives whom you divorce by Zihar, your mothers. Nor has He made your adopted sons your sons. Such is (only) your (manner of) speech by your mouths. But God tells the truth and He shows the (right) way. Name them after their fathers: that is juster in the sight of God. But if you don't know their fathers' names, (call them) your brothers in faith and your maulas. . . .” (33:4-5)

The Quran referred to Mohammad in person concerning this issue:

“Mohammad is not the father of any of your men, but (he is) the apostle of God and the seal of the prophets, and God has full knowledge of all things.” (33:40)

From that time on Zayd was again called Zayd ibn Haritha and not ibn Mohammad. It so happened that Zayd and Zainab did not turn out to be a happy family. The prophet felt sad for to him Zayd was like a son, and the idea of the marriage was his. Repeatedly he would tell the impatient Zayd to keep his wife and not divorce her. But God had other plans, for He wanted to reinforce the cancellation of that form of adoption by making Mohammad marry Zainab after her divorce, so that other adopting fathers would not be embarrassed if they wanted to marry the divorcee of their adopted son, making Mohammad the first example thereof; and He let Mohammad know it:

“It is not fitting for a believer, man or woman, when a matter has been decided by God and His apostle, to have any option about their decision. If any one disobeys God and His apostle, he is indeed on a clearly wrong path. Behold! You (Mohammad) do say to the one who received the grace of God and your favour: retain your wife (in wedlock) and fear God. You do hide in your heart that which God is about to make manifest. You did fear people but it is more fitting that you should fear God. Then when Zayd has dissolved (his marriage) with her, with the necessary formality, We joined her in marriage to you, in order that (in future) there may be no difficulty to the believers in (the matter of) marriage with the wives of their adopted sons when the latter have dissolved with the necessary (formality) (their marriage) with them. And God’s command must be fulfilled.”

(33:36-37)

Some orientalists who are adverse to Islam tried to exploit the event in a slanderous way trying to accuse the prophet—peace and prayer be upon him—of being behind the divorce as he had been behind the marriage, because he wanted to marry Zainab. Any one who studied the character of the prophet is well sure that such allegations cannot be true. Besides, Zainab was his cousin, he knew her well, and he could have had married her in the first instance had it been his wish.

The new legislation did not in the least undermine the relation between adopted son and parent. The inheritance laws apply and only the legitimate blood relations inherit, but Islam permits the muslim to give out of his

legacy to whom or whatever he wishes, within a ceiling of one third of his possessions. It is up to the adoptive parents then to relegate what they see fit to the adoptee within that limit.

As the adopted child grows up, the women in the household including mother and daughters should follow the Islamic code of social conduct regarding dress and intimacy. Unless he was breast fed by the mother (lactation fosterage), he can marry one of the daughters.

The links of love and appreciation between Mohammad and Zayd remained as close as they ever had been. Mohammad chose Zayd's son to lead an army but Mohammad died before. Aisha, the prophet's wife, once said: had Zayd been alive, the prophet would probably have selected him as his successor as caliph.

