

**ACCESS TO ASSISTED HUMAN
REPRODUCTIVE TECHNOLOGIES
IN THE LIGHT OF ISLAMIC
ETHICS**

by

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Declaration

I, Mohammad Iqbal, confirm that the work presented in this thesis is my own. Where information has been derived from other sources, I confirm that this has been indicated in the thesis.

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Abstract

The purpose of this thesis is to evaluate the hypothesis that infertile Muslim couples living in secular societies or otherwise are unduly restricted in their approach in making use of the facilities now available through modern human reproductive technologies. This is mainly because of the unbending and categorical fixation of the early interpretations of Islamic allegorical verses of the Qur'an by Islamic jurists who remain steadfast in refusing to contemplate the present advanced nature of the changing world.

To date, this unilaterally uncompromising attitude of Islamic jurists has not allowed them to issue a clear mandate to infertile Muslim couples, nor has Shari'ah law been sufficiently reviewed by them to consider and incorporate modern science, enabling infertile Muslim couples to have access to the innovative facilities afforded by modern medical human reproductive technologies.

The majority of Islamic states are ruled by kings, sheikhs, and dictators on the basis of outdated feudal systems; the fields of religious teachings are left in the hands of religious scholars who are obviously interpreting Qur'anic allegorical verses or Hadiths under the influence of feudal rulers.

This thesis also looks into the unethical and compelling defences of patriarchal dominance over the fundamental rights of Muslim females, restraining them from acting freely, and the unfair enforcement of outdated penal systems. The undue insistence of religious encroachment over the firmly established secular systems leaves little room for sufficient attention to be paid to how to become contributors in these changing times and to become part of the globally developing human reproduction systems.

Therefore, it has become necessary to deliberate and to devise a model for an appropriate structure, religious or otherwise, to guide infertile Muslim couples in sharing the benefits of modern human reproductive technologies, whilst also remaining true to the core principles of Islam.

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Glossary

<i>Al-walad li'l firash</i>	child of the matrimonial bed
<i>'asr al-tadwin</i>	the era of putting the religious texts into writing
<i>Abid</i>	slaves
<i>Ahl al-kitab</i>	people of the book
<i>Ahrar</i>	free person
AID	Artificial Insemination Donation
<i>ajal</i>	time period of temporary marriage 'muta'
<i>ajr</i>	money consideration of temporary marriage 'muta'
<i>al-aql</i>	reason
<i>alim</i>	a learner of Qur'an and Hadith
<i>Al-Isaba</i>	biographies of the Companions of the Prophet Mohammad
<i>al-maslahah</i>	public interest issues
<i>al-urf</i>	local custom
<i>amwal</i>	property
<i>aqd</i>	marriage contract
<i>aql</i>	reason
<i>Bid'a</i>	<i>Bid'a</i> (innovation) in Islam is an act or errant behaviour, a scandalous violation of the sacred tradition
DI	donor sperm insemination
<i>din</i>	religion
ESC	embryonic stem cell
ET	embryo transfer
<i>fiqh</i>	religious knowledge
<i>firash</i>	matrimonial bed
FISH	fluorescent <i>in situ</i> hybridisation
<i>Fitna</i>	civil war
FREDI	fallopian replacement of eggs with delayed intra-uterine insemination
<i>fuqaha</i>	jurists
<i>gabul</i>	acceptance
GIFT	gamete intra-fallopian transfer
<i>Hadith</i>	the recorded deeds and sayings of the Prophet Mohammad

<i>haquq adami</i>	public/personal rights
<i>haquq Allah</i>	God's rights
<i>Hudud</i>	capital crime
<i>ibarah al-nass</i>	literal or explicit meaning of a given text
ICSI	intracytoplasmic sperm injection
<i>Idda</i>	the waiting period that required a Muslim woman, separated from her husband, divorced or death
IFA	Islamic Fiqh Association in Jeddah
<i>Ijab</i>	offer
<i>Ijtihad</i>	process of legal reasoning
IOMS	Islamic Organisation for Medical Science
<i>iqrar</i>	acknowledgement, confession
<i>Istishab</i>	presumption of continuity
<i>Istishan</i>	juristic preferences
ITI	Intra-tubal insemination
IUI	intra-uterine insemination
IVF	<i>in vitro</i> fertilisation
IVG	<i>in vitro</i> growth of oocytes
IVM	<i>in vitro</i> maturation of oocytes
<i>Kafala</i>	legal fostering
<i>la tabanni fi al-Islam</i>	adoption is not permissible in Islam
<i>Lisan al-Arab</i>	the language of the Arabs
<i>Ma'ayb al Rejal</i>	the vice of men
MAC	medically assisted conception
<i>madarraah</i>	something harmful
<i>madrasas</i>	Islamic theological schools
<i>mahram</i>	related by blood, marriage or sexual ties
<i>Manfa'ah</i>	something useful
<i>maqasid</i>	objective
<i>maslaha</i>	consideration of the public interest
<i>Maslahah Mursalah</i>	unrestricted public interest
<i>mujtahid</i>	ulama trusted in the exercise of ijti had
<i>muta</i>	temporary marriage
<i>nafs</i>	life

<i>namzad</i>	engagement
<i>nasab</i>	a person's geneology
<i>nasl</i>	progeny
<i>nika</i>	permanent marriage
PCR	polymerase chain reaction
PCT	post-coital test
POST	peritoneal oocyte and sperm transfer
PROST	pronuclear stage tubal transfer
PZD	partial zone drilling
<i>Qanun-e-Shahadat+</i>	law of evidence
<i>Qiyas</i>	analogical reasoning
<i>Quiwama</i>	maintenance and protection
<i>Qur'an arabi</i>	Qur'an in the Arabic language
ROSNi	round spermatid nuclei into oocytes
<i>Sadd al-Dharai</i>	blocking the means
<i>Salat</i>	prayer
<i>shar</i>	of the law
SUZI	subzonal sperm injection
<i>Ta'dib al Nesvan</i>	disciplining women
<i>Tafsir</i>	commentary on or explication of the Qur'an
<i>Taqlid</i>	imitation of forefathers
<i>Taqwin al-aql al-arabi</i>	the process of the formation of Arab thought
<i>tarbiyah</i>	general care and upbringing of a child
TEST	tubal embryo stage transfer
TET	Tubal Embryo Transfer
<i>umma</i>	community of believers
<i>URF</i>	local customary precedent
<i>usul</i>	principle
<i>Usul-al-Fiqh</i>	well-established Islamic methodology
<i>zawaj</i>	pair or mate
ZIFT	zygote intra-fallopian transfer

*The end of earning is limited and defined,
whereas learning and progressing have no limit
until we reach our end.¹*

Petrarca Francesco

¹ *'Rerum familiarum XVII'* (1975), 8 in *Opere*, Florence, 946.

Introduction

The unilateral and often uncompromising conduct of some Islamic religious scholars has become a source of great anxiety, especially amongst physicians and clinicians practising modern reproductive procedures when caring for the difficulties faced by infertile Muslim couples, whether living in secular societies or otherwise. It further creates an impasse when interpreting lineage as a spiritual rather than a social issue. Thus, the voluntary approach of modern reproductive technology to relieve infertility has become commonly used in secular societies, with a lessening of the influence of religious traditional customs.² James Rachels notes:

“From the 18th century onwards the process of success and increase in human knowledge began to differentiate and diverge human reasoning with the aid of scientific innovatory revolution in modern human reproductive technologies. It has become more and more pragmatic that ‘we care about human life, because we are human, and this is all there is to it’.”³

He further states that: “We can try to become clearer about what our values are, and about the possible alternatives. But we can no longer ask questions about the truth of our convictions.”⁴

Similar to scholarly knowledge,⁵ successes of modern reproductive technologies, although universally valid and accessible, cannot be confined to a specific culture or regional civilisation.⁶ For example, if success of scientific knowledge is universally valid and its standard is adequately known,⁷ then ‘it is justifiable to judge Islam in

² Keddie, N. R., 2003. Secularisation and its discontents. *Daedalus*, 132 (3): 14-30.

³ Rachels, J., 1985. Can Ethics Provide Answers? In: M. Velasquez and C. Rostankowski, eds., *Ethics Theory and Practice*. Englewood Cliffs, NJ: Prentice Hall.

⁴ Ibid.

⁵ Tibi, B., 1994. Islamic Law/Shari’s, Human Rights, Universal Morality and International Relations. *Human Rights Quarterly*, 16: 277-299.

⁶ Weber, M., 1964. *Soziologie, Wetgeschichtliche Analysen, Politik*. Stuttgart: Alfred Kroener Verlag.

⁷ Ibid.

terms emanating from cultural modernity, being a source of modern universal knowledge'.⁸ James Rachels succinctly defines it as:

“Transformation of human reproductive sciences, rather than fixation of spiritual ordinations, which has given a new shape to human reproductive technology, and opening opportunities for infertile couples. The religious guidance through religious scholars of what is right and wrong, within the framework of cultural traditions, became on the receding end.”⁹

Such a progressive view can impart greater levels of overall well being and diminish the collective need for religious consolation.

We live in an age when leading scientists challenge not only religious orthodoxy but the very essence of religious belief itself. Indeed, Colin Blakemore¹⁰ has recently referred to science as being ‘one gene away’ from ‘winning the fight’ against religion; as if the answer to all outstanding questions lies within the human genome. If this is true, then it is, “One more territorial gain in the metaphysical chess match between science and religion”.¹¹

One aspect of this ‘fight’ may be described as the sweeping aside of religious objections to scientific endeavour and medical ‘advances’. That which is scientific is held to be above any other form of conceptual understanding; scientific ‘truth’ sweeps aside religious mythology. During the relatively modern era, science seems to be ‘seducing religions’, as if eager to bring in genetic code to support human medical care in preference to all issues of a non-scientific nature.¹² Steven Goldberg¹³ draws attention to such a transgression by stating that, day by day, science is persuading religions to consider its major successes worthy of attention

⁸ Op. cit. Tibi, 1994.

⁹ Op. cit. Rachels, 1985.

¹⁰ Blakemore, C., 2009. Science is just one gene away from defeating religion. *Sunday Observer*, 22nd February.

¹¹ Ibid.

¹² Goldberg, S., 1999. *Seduced by Science: How American Religion has lost its way*. New York: New York University Press.

¹³ Ibid.

against a religious stand and that “science cannot generate our values and science should not set our agendas”.¹⁴ It is only acceptable if innovations of science are bad science and encroach upon religious agendas. Contrary to Steven Goldberg’s contentions,¹⁵ the value system of science marshals progress and creates a sagacious emphasis on modern reproductive development. It is accepted that science may not eradicate all human needs, nor can it distinguish and put right wrong, or good and evil appropriately, but it has so far proved, among other things, how to alleviate infertility. “Whether it is an unconscious adoption of the notion that only science is important, or simply an overwhelming desire to be trendy, religious groups often miss the opportunity to make a distinctive contribution to public debate.”¹⁶

Islamic religious scholars are sensitive to such an approach and this thesis explores the ‘conjunctive and disjunctive influence’¹⁷ upon Islamic religious concepts, determining the fate of Muslim infertile couples living in secular societies within the confines of ‘biomedical technology and ethical decision making’.¹⁸ Prophet Mohammad, along with his companions, laid down the foundations of the ideal traditional social cultural systems of Islam through the process of *tajdid*,¹⁹ renewal, and *islah*,²⁰ ratification, which still remain vivid, intact and progressive.²¹ According to Shahid Athar: “Physically and intellectually, man is not the same as he was a million years ago. These ‘improvements’ in humans have come from within over a period of time by the process of adaptation, new learning and out of a need.”²²

¹⁴ Fadel, H. E., 2002-2003. The Islamic Viewpoint on New Assisted Reproductive Technologies. *The Fordham Urban Law Journal*, 30: 147-157.

¹⁵ Goldberg, S., 1994. *Culture Clash: Law and Science in America*. New York: New York University Press.

¹⁶ Op. cit. Goldberg, 1999.

¹⁷ Smith, G. P., 2006. Law, Religion and Medicine: Conjunctive and Disjunctive? *Macquarie Law Symposium*, 2006: 9-39.

¹⁸ Ibid.

¹⁹ *Tajdīd* literally means the revival of Islam in order to purify and reform society, leading to equity and justice.

²⁰ To reform or reshape.

²¹ Voll, J. O., 1983. Renewal and reform in Islamic History. In: J. L. Esposito, ed., *Voices of Resurgent Islam*. Oxford: Oxford University Press.

²² Shahid, A., 2007. Human Genetic and Reproductive Technologies: A Muslim’s Understanding of the Secular Perspective. *Journal of the Islamic Medical Association*, 39: 168-172.

Similarly, modern human reproductive technologies and genetic sciences have ushered in a new age. For example, the emergence of changing procedures in human reproductive technologies to alleviate infertility require attention and there is a need to review Shari'ah laws and if necessary change to coincide with the changing situation of the time.

Religious scholars are not sure how to defend the existing established cultural systems and traditions against modern scientific developments, in particular modern thought systems and values. There are, of course, those who are more intellectually active and consider it necessary to rethink, reinterpret and if necessary to change or amend those Shari'ah laws deemed outdated. Ammar Nawal draws the distinction by stating that:

“In a stagnant or a closed society such possibilities are smothered. The early Islamic society was highly dynamic and full of vitalities. Islam was a great revolution, not only religious but also social and economic. It had upturned all old ideas and ideologies, changing ‘from a matrilineal to a patrilineal society—a change Islam was to consolidate.’^[23] It gave human society a new value system and heightened the human sensitivity for change for the better. Islam put greater emphasis on change and called everything old into question. It encouraged people to rethink the beliefs of their ancestors. All that ancestors believed in was not necessarily right and beneficial.”²⁴

Maintaining the *status quo* demonstrates a backward gaze rather than a forward march to get abreast and contribute to modern scientific developments.

Again, as per Al-Faruqi: “The revelation in Islam separated the ‘what’ from the ‘how’.^[25] The what was God’s injunctions, and the how was the domain of humans. The what is ultimate and absolute, while the human is changing and developing.”²⁶

²³ Ahmed, L., 1986. Women and the Advent of Islam. *Signs*, 11 (4): 665-691.

²⁴ Nawal, H. A., 1995. *On Being A Muslim Woman: Laws and Practices*. Available at: http://www.religiousconsultation.org/Ammar_on_being_a_muslim_woman.htm.

²⁵ Al-Faruqi, I. and Al-Faruqi, L. L., 1986. *The Cultural Atlas of Islam*. New York: Macmillan Publishing Company. Quoted in Nawal.

²⁶ Op. cit. Nawal, 1995.

However, shortcomings have arisen in the human interpretation of Qur'anic allegorical verses which have been furthered by interpreting them subjectively and not reviewing or amending them in accordance with the changing demands of time.

In a guide to Islamic scholars, in relation to receptiveness of ideas from ancient to modern times, al-Kindi has outlined that:

“We ought not to be ashamed of appreciating the truth and of acquiring it wherever it comes from, even if it comes from races distant and nations different from us. For the seeker of truth nothing takes precedence over the truth, and there is no disparagement of the truth, nor belittling either of him who speaks it or of him who conveys it. [The status of] no one is diminished by the truth; rather does the truth ennoble all.”²⁷

The religious philosophies in the eyes of religious scholars have seldom been assigned independent responsibilities.

Undoubtedly, for the past two decades, contemporary Islamic movements have progressively re-emerged from the side path of intellectual trajectory into the arena of new conceptualisations. Various Islamic states, such as Algeria, Lebanon, Egypt, and Palestine, still have to appraise, analyse and add new Western scientific achievements into their traditional cultural values.²⁸ They also have to recognise and give credit to the valuable contributions made by Muslim individuals in their respective fields of engineering and law, and especially the science of human reproduction. Whilst Islamic religious scholars are consistently placing more emphasis on the understanding of Islamic faith through the existing and well established interpretation of Qur'anic revelation, Islamic progress is experiencing a

²⁷ Al-Kindi, in his *Fi l-falsafa al-ald* (On First Philosophy), trans. by A. Ivry, *Al-Kindi's Metaphysics* (Albany, 1974), p. 58, text in Abfi Rida, *Rasa 'il al-Kindi al-falsafiyya* (Cairo, 1950-53), I, p. 103. Al-Kindi's statement follows a quotation from Aristotle, *Metaph.*, I, 993b, 15-16 (Ivry, note ad loc.). Cf. the oft-quoted maxim: “Judge the truth by what is said not by who says it”; e.g., al-Ghazali, *al-Munqidh min al-dalal*, ed. J. SalYbd and K. clyad, third edition (Damascus, 1939), p. 101; trans. M. W. Watt, *The Faith and Practice of Al-Ghazali* (London, 1967), pp. 39-40: “Do not know the truth by the men, but know the truth, and then you will know who are truthful” (ascribed to cAll b. AbT Thlib); and Clement of Alexandria's statement (*Stromateis*, VI, 66) that we must always judge the truth by what is said, not by who says it; cited by H. Chadwick, *Early Christian Thought and the Classical Tradition* (New York, 1966), p. 44.

²⁸ Vali, Nasr, 2003. ‘Lessons from the Muslim world’. *Daedalus*, p. 67.

setback due to its hesitant approach in keeping abreast with human reproductive movements of the time.

Eminent Muslim writers like Mawdudi²⁹ have tried to set a pace by suggesting a break from historical cultural traditions and gradually steering towards modern scientific developments. However, this did not receive wholehearted consent from other Islamic religious scholars to adapt it during an unfolding era of scientific reproductive innovations. Instead, religious scholars have opted for a restrained approach towards modern reproductive technologies, always gazing back at the *status quo* time scales which were beneficial but are no longer proving helpful.

One of the adverse effects of this hesitant approach has been that when Islamic religious scholars deliberate upon cultural issues of religious understanding, they acquire more reckoning than when discussing assisted reproductive issues in an unconvincing manner. It may be that they either genuinely misunderstand or deliberately refrain from acknowledging the main purpose of assisted human reproductive technology, which is basically to alleviate infertility. “Thus, not only have the *ulama* lost their historical monopoly on the knowledge of the sacred sources of Shari’ah, but the traditional interpretations of those sources are gradually being questioned by ordinary Muslims.”³⁰ Whereas the Sunni sect of Islamic religious scholars encourages *in vitro* fertilisation (IVF) within the prescribed limits of Shari’ah law, the Shi’ite sect of Islamic religious scholars has recently started condoning the donation of sperm and ovum, under the principles of *ijtihad*³¹ and *ibaha*.³²

²⁹ Mawdudi, S. A. A., 2000. UK Islamic Mission, 202 North Gower Street, London.

³⁰ An-Na’im Abdullahi, A., 2008. *Islam and the Secular State*. Cambridge, MA: Harvard University Press. p. 19.

³¹ *Ijtihad* is to undertake an intensive and thorough study of the issue through reason in forming a rational judgement, within the guidance of the Qur’anic revelation and the Sunnah, for adjudicating, formulating and adapting a new approach to the issue. Al-Ghazzali, al-Shatibi, Ibn al-Qayyim al-Jawziyya, and more recently al-Khallaf and Abu Zahra, have elaborated on the importance of *ijtihad* as a further source of Islamic jurisprudence. *Ijtihad* is to include all the ingredients to form rational judgements through human reasoning and objective deliberations.

³² *Ibaha* is a well-known and widely recognised normative doctrine of an Islamic school of thought that everything is permissible unless there is an explicit stipulation to the contrary. Fatemi, S. M. G., 2005. Egg and Embryo Implantation: a Comparative Study of Shi’ite Teachings and Kantian Ethics. *Islam and Christian Muslim Relations*, 16 (3): 297-312; and Amili, Shaykh al-Hurr al., 1992. *Wasa il*

This latter view is based upon their contention that the Qur'an itself is entirely authenticated (*qati al-thubut*, of indisputable origin), and the majority of its verses are revealed as binding judgements (*ayat al-ahkam*). However, in the majority of instances, being allegorical, its interpretation is open to *ijtihad* (reasoning), i.e. to different comments and interpretations (*zanni al-dalala*), open to the formulation of rational judgements. It may be that sometimes the classified text does not bear the clarity of *qati* (indisputable), *zanni* (conjectural), *zahir* (obvious), *nass* (explicit), *khass* (specific) or *amm* (general), and this necessitates the formation of a judgement by referring or adjoining to similar existing Qur'anic verses.

It is obvious that religious leaders maintain a significant place amongst their respective communities and it is thus behoven upon them to steer the issues by assigning an interpretation, which they deem correct, to the allegorical verses of the Qur'an. Whichever line of reasoning they adopt, be it subjective or objective, their main focus should be justice and the welfare of their community; salvation is not within their domain. Their recourse to manifest open broadmindedness and the liberal exercise of prudence in sensitive religious areas can curtail arguments from reaching logical conclusions by ignoring the 'madrassa approach'.³³ While Sunni Islamic religious scholars stringently adhere to old established interpretations of the allegorical verses of the Qur'an, the tenets of Sunna and Hadiths, Shi'ite Islamic religious scholars broaden their horizons by embracing the principle of *ijtihad* as well. Thus, the Shi'ite approach of applying the principles of *ijtihad* has been powerful in alleviating infertility.

Maryam Rajavi³⁴ takes issue with Islamic clerics and states that "[they] have imparted a flavour of Islam to their views, and in the name of Islam they advocate despicable hostility, a ploy unambiguously condemned in the Qur'an".³⁵ Maryam

al-Shi'ia'ia, ila tahsil masa'il al-sharia. Qum: Ahlulbayt Organisation, 27: 173, state that 'everything which is not expressly prohibited by an authentic source is permissible'.

³³ Most primary schools are run by unqualified teachers belonging to a backward strata of society. Their intellectual horizon is severely restricted to medieval theology, which becomes a power with which to wield tremendous influence on poorer and illiterate masses.

³⁴ Rajavi, M., 1995. *Women, Islam & Equality*. National Council of Resistance of Iran.

³⁵ Ibid. "Islam is a far cry from what Khomeini and the mullahs would have us to believe. Islam is the religion of *Towhid*, or oneness, and worship of one God. From Abraham to Muhammed, the leading women of the religion of *Towhid* have shone forth, from Hajar (Abraham's wife), Asieh (Pharaoh's

quotes Sura *Saff* and points to the clear guidance issued therein: “And who does greater evil than he who forges against God falsehood, when he is being called unto [Islam] surrender?”³⁶ She further states that “... the mullahs [clerics] have ironically inverted the teachings of the Prophet and Holy Quran on one of the most brilliant and appealing aspects of Islam”.³⁷ They completely ignore the fact that Muslim infertile couples are part of the same creation, seeking redemption from unnecessary impediments created in their way when seeking relief from infertility.

With regard to the equality of genders, the Qur’an guides Muslims to liberate themselves. In chapter *Nisaa* of the Qur’an, men and women are addressed in equal terms: “Mankind, hear your Lord, who created you of a single soul, whether male or female, and from the pair of them scattered abroad many men and women: fear God by whom you demand one of another.”³⁸ Therefore, to lay the responsibility of infertility entirely on women, either due to a patriarchal influence or by unilateral interpretations of the allegorical verses of the Qur’an, is highly unconvincing.

“The ethical argument can easily lose its significance if the Qur’anic verses are [also] not interpreted in the light of modern changes taking place in scientific human reproductive field. ... For example, does sperm donation form the basis of it being categorised as ‘adultery’ without human contact; if not, why is it so severely interpreted?”³⁹

Not facing the argument judicially eventually undermines the confidence in the issue itself. It is of interest to note that, having appraised the position of Shari’ah law on infertile couples’ position with regard to third party intrusion, the Shi’ite position

wife, who raised Moses), and the Virgin Mary to Khadijeh (Prophet Muhammad’s wife) and Fatima (his daughter). The ideology of Towhid, which is the basis of the Islamic worldview, opposes all discrimination. Towhid makes a passionate call for the equality and oneness of women and men.”

³⁶ The Qur’an, interpreted by Arthur J. Arberry (Qum: 1962, Centre of Islamic Studies), Sura LXI, *Saff* (Ranks), Verse 7, p. 581, quoted by Rajavi, 1995.

³⁷ Op. cit. Rajavi, 1995.

³⁸ Qur’an 4:1.

³⁹ Op. cit. Rachels, 1985.

since Ayatollah Ali Hussein Khamanei's *fatwa* of 1990 has been considerably changed.⁴⁰

Quite often Muslim clerics are designated to their religious advisory positions by Muslim state rulers. Thus, being under the influence of the rulers they are restricted in how they interpret or review the allegorical verses of the Qur'an. This has been regarded as one of the main causes of the lack of co-ordination between Islam and modern science. The other main factor has been the madrassa-type education with its restricted curriculum creating unbridgeable gulfs, which have perpetuated and accelerated the intellectual decline. According to Fazlur Rahman:

“the real reason for the decline of the quality of Islamic learning was the gradual starvation of the religious sciences through their isolation from the life of lay intellectualism which itself then decayed. ... Even more important was the way in which the content of the orthodox sciences was developed so that they would be isolated from any possible challenge and opposition.”⁴¹

During the heyday of Islam, humans were involved in analysing every kind of ethnic and religious persuasion, whereas the scientific disciplines were unfolding a variety of new discoveries. Islamic civilisation became involved in its own cultural renaissance and human reproduction became an important subject in its own right.⁴² Central to modern scientific discoveries became the study of the progressive development of human reproductive innovations and surrogacy procedures, and ‘[their] acceptance in public education’⁴³ — for, ‘it is this science from which the whole study of genetic ... arises and which in turn direct and validate the very framework for the new biomedicine.’⁴⁴ According to George Smith, it is “as vectors

⁴⁰ Inhorn, M. C., 2006c. Making Muslim babies: IVF and gamete donation in Sunni versus Shi'a Islam. *Culture, Medicine and. Psychiatry*, 30 (4): 432-435.

⁴¹ Rahman, F., 1979. *Islam*. Chicago, IL: University of Chicago Press, p.186.

⁴² Dhanani, A., 1996. *Muslim Philosophy and the Sciences*. The Muslim Almanac, Institute of Ismaili Studies.

⁴³ Greenawalt, R. K., 2003. Establishing Religious Ideas: Evolution, Creationism, and Intelligent Design. *17 Notre Dame Journal of Law, Ethics and Public Policy*, 321, 334.

⁴⁴ Smith, G. P., 1982. Intrusions of a Parvenu: Science, Religion, and The New Biology. *3 Pace Law Review*, 63 (1): 63-82.

of force in shaping both ethical and moral constructs for decision making”.⁴⁵ At the Local Seminars of the Islamic Organisation for Medical Sciences it has been recorded that:

“Leaving such innovations without an Islamic scrutinising eye may, in fact, lead to a wave of social confusion in an Islamic world which is keen to draw a clear demarcation line between what is Islamic and what is not, between what is *Halal* and what is not.”⁴⁶

Therefore, Muslim infertile couples living in a secular society ‘assume special importance in the light of the fact that a Muslim may have to resort to these innovations, which necessitates explications of where Islam stands with regard to these innovations’.⁴⁷ The discipline of religious scholars is to understand, appreciate, complement, and, if necessary, to enlarge and strengthen the determination of Muslim infertile couples to achieve their ultimate goal of having their own baby, and thus secure happiness and tranquillity in their lives. The real question thus remains whether religious bondage will make ‘a distinctive contribution to the bioethics controversy, or will it merely echo the agenda and the perspective of modern science?’⁴⁸

Of the three Abrahamic religions (Judaism, Christianity and Islam), Islam is the only one with a holy text, the Qur’an, wherein human conception and embryogenesis is described; furthermore, it is described not once but in as many as sixty distinct parts of the text. It also deals with the process of ensoulment in relation to development in the womb. Whilst there can be disagreement on precisely when this occurs in the interpretation of the Qur’an, it is clear that it can only occur in the womb and thus through the mother. Thus, a human embryo conceived outside the womb, in a petri dish, cannot be ensouled and may be regarded as having a different status to that of

⁴⁵ Ibid.

⁴⁶ Minutes of the Local Seminars of Islamic Organisation for Medical Sciences (IOMS), 24th May, 1983.

⁴⁷ Ibid.

⁴⁸ Goldberg, S., 2002. Religious Contributions to the Bioethics Debate: Utilising legal rights while avoiding scientific temptations. *Fordham Urban Law Journal*, 30 (1): 35-45.

an embryo implanted in the womb. Islam is the only religion where the Qur'an has revealed and explained at approximately 60 different places the precise stages of human creation accurately, and this was fortuitous and enabled Muslim scientific scholars to make use of the divine information. Nevertheless, the current progress of medical human reproduction is admittedly revolutionary and it is consistently being harnessed, thereby inviting religious scholars to take heed of its developments. For example, if the potential individual is corresponding to the soul, as determined in the IVF procedure, then it needs to be recognised in a broader prospect. It is no different when it takes place in the womb, and the role of the mother during the process of ensoulment is identical in both circumstances.

The modern scientific invitation to human reproduction claimed its validity through donor insemination as early as the 1950s. This was surpassed in the 1970s when women became able to have children without a partner of the opposite sex,⁴⁹ long and chronic menopause had been overcome by egg donation,⁵⁰ and death barriers overcome by the freezing of the embryos.⁵¹ Muslim infertile couples witnessed a host of new procedures becoming available through huge advances in assisted reproductive technology (ART) and yet were unable to benefit from these in the absence of a unanimous religious guidance.

When editing Abul Fadi Mohsin Ebrahim's⁵² book chapter, 'Biotechnical Parenting', Syed Mumtaz Ali⁵³ concurred that, as biomedical parenting is being developed at a 'frantic pace', the need for some broad guidelines is also becoming 'crucial and urgent'.⁵⁴ It would seem that biotechnical parenting and the 'termination of foetal

⁴⁹ NY State Task Force on Life and the Law, *Assisted Reproductive Technologies: Analysis and Recommendations for Public Policy* 74 (1998).

⁵⁰ Paulson, R. J., Thornton, M. H., Francis, M. M. and Salvador, H. S., 1997. Successful Pregnancy in a 63 year old woman. *Fertility and Sterility*, 67 (5): 949-951.

⁵¹ Reichman Schiff, A., 1997. Arising from the Dead: Challenges of Posthumous Procreation. 75 *North Carolina Law Review*, 901.

⁵² Ebrahim, A. F. M., 1991. *Abortion, Birth Control and Surrogate Parenting*. American Trust Publications.

⁵³ 'Biotechnical Parenting'. Edited by Syed Mumtaz Ali. <http://muslim-canada.org/biotechnical.htm>, accessed 18th December, 2008.

⁵⁴ Ibid.

life⁵⁵ are becoming the central issues which Muslim scholars must deliberate. This thesis would argue that the sheer inability of Islamic religious scholars to take notice of modern reproductive technologies and not reviewing the existing interpretation of the allegorical verses of the Qur'an appropriately is impeding the progress of Islamic scientific human reproductive advancements.

In the beginning, science was part of religious cultural systems. However, by not receiving any co-operation from religious scholars, it was left with no option but to steer its progress by choosing its own independent pathway. By simply adopting an autonomous role, science has neither become bad nor has become unjust. If anything, it has become unilaterally successful and progressive, whereas religious scholars have remained hesitant to recognise, appreciate or accept its unprecedented progress. It is nothing more than their inability to grasp and appreciate modern scientific achievements appropriately. According to Tibi, "we live in an age characterised by globalisation that engenders a structure in which nation-states and civilisations interact with one another,^[56] as if it's a world government, and a central authority is missing."⁵⁷

Even the highly committed and controversial explanations of Weinberg fall short of disentangling powerfully co-related scientific advancement through popular religious cultural incentives.⁵⁸ He could not confirm that the origin of science was independent of religious traditions and cultures and there seems to be no converging hostility between religion and science. If there is any vision of it, then it only came into being at the beginning of the 18th century. Besides other discoveries,⁵⁹ scientific innovation in human reproduction came into being in its 'quest for finding natural

⁵⁵ Ibid.

⁵⁶ Op. cit. Tibi, 1994.

⁵⁷ Bull, H., 1977. *The Anarchical Society: A Study of Order in World Politics*. New York: Columbia University Press.

⁵⁸ Spahn, E. and Andrade, B., 1997-1998. Misconceptions: The Moment of Conception in Religious, Science, and Law. *University of San Francisco Law Review*, 261.

⁵⁹ Peebles, P. J. E., Page, Jr., L. A. and Partridge, R. B., 2009. *Finding the Big Bang*. Cambridge, NY: Cambridge University Press.

causes for all natural phenomena’,⁶⁰ not in defiance to religious convictions. It may be disheartening for Weinberg to realise that religions are here to stay and so are the clerics who influence the believers, maybe for their own gains.

Mustafa Akyol presented a paper entitled “Rethinking the ‘Secular Perspective’ on Biology going beyond the Monopoly of Materialism” at the conference Rethinking the Secular Perspective on Biology, held on 9th February, 2006.⁶¹ He stated that:

“Science is the study of the natural world and this is a value-free and premise-free enterprise. Of course, science has some basic premises, such as that there is a thing called natural world one can study, but besides that, science is neither theistic nor atheistic.”

This would have been scientifically a defining statement had Mustafa taken into consideration that the inception of science came into being through theological traditions and cultures. Such a definition would also have refuted the common expression that *science is inherently atheistic*, a challenge which Weinberg has defended by stating that:

“I personally feel that the teaching of modern science is corrosive of religious belief, and I’m all for that! One of the things that in fact has driven me in my life is the feeling that this is one of the great social functions of science—to free people from superstition.”⁶²

He further stated that:

“From my own point of view, I can hope that this long sad story will come to an end at some time in the future and this progression of priests and ministers and rabbis and ulamas and imams and bonzes and bodhisattvas will come to an end, that we’ll see no more of them. I hope that this is something to which

⁶⁰ Mustafa, A., 2006. Rethinking The ‘Secular Perspective’ on Biology: going beyond the Monopoly of Materialism. Paper presented at Rethinking the Secular Perspective on Biology. Available at: http://www.thewhitepath.com/archives/2006/02/conference_reth.php.

⁶¹ Ibid.

⁶² Weinberg, S., 2000. *Free People From Superstition*. Freethought Today. Available at: www.ffrf.org/fitoday.

science can contribute and if it is, then I think it may be the most important contribution that we can make.”⁶³

Syed Kamran Mirza took Islamic religious scholars to task with his statement that:

“Religion had been at odds with science, still is at odds, and it will remain so until all religions would take demise from this mortal world. After the renaissance (i.e. during the last 3-4 centuries) — in the marathon race of dominance, science had won and religion had lost.”⁶⁴

In the ensuing paragraph he again impliedly invites Islamic religious scholars and states: “As long as all the Muslim countries remain under the clutch of Islam — Muslims will never be able to compete in the field of science with the rest of the world. The less religious orthodoxy, the more achievement in science.”⁶⁵ Syed Kamran Mirza has in fact supported this thesis’ argument that as long as Muslims remain under the strict domain of existing Shari’ah law, which is not divine but man-made, and Islamic religious scholars remain gazing back at past interpretations of the allegorical verses of the Qur’an in a defensive posture, then there may not be any common understanding forthcoming between religion and modern reproductive technologies. In contrast, it may be extremely hard and unconvincing for science to unveil the mystery of creation upon which religious scholars anchor their faith.

Mustafa Akyol philosophises the preceding discussion by stating that it is:

“For the scientist who has lived by his faith in the power of reason,⁶⁶ the story ends like a bad dream. He has scaled the mountains of ignorance; he is about to conquer the highest peak; as he pulls himself over the final rock, he is greeted by a band of theologians who have been sitting there for centuries. ... This is

⁶³ Ibid.

⁶⁴ Mirza, S. K., 2007. *History of Science and Religion*. Available at: http://www.mukto-mona.com/Articles/skm/history_science_religion.htm (accessed 6th January, 2011).

⁶⁵ Ibid.

⁶⁶ The discovery of DNA is the result of intelligent reasoning.

called the ‘anthropic principle’, that is, every aspect of the universe is designed with a view to human life.”⁶⁷

While discussing infertile Muslim couples’ predicaments within the confines of modern human reproductive technologies, it is difficult to surpass that the relevant verses of the Qur’an which remain sufficiently explained regarding the difficulties of infertility in early Islam. For example:

“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.”⁶⁸

The Qur’an again reveals that:

"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.”⁶⁹

Finally:

“[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.”⁷⁰

⁶⁷ Op. cit. Mustafa, 2006.

⁶⁸ Qur’an: 42: 49-50.

⁶⁹ Qur’an: 21: 89-90.

⁷⁰ Qur’an: 51: 28-39.

It is therefore worth noting that since early Islam the foundation of human knowledge⁷¹ with regard to infertility was embedded in religious culture, ethics and morality,⁷² presenting similar predicaments as infertile Muslim couples face today. Ever since the beginning of Islamic culture, although religious scholarly knowledge has gained universal validity, infertility and indeed other social predicaments have “not [been] confined to a specific cultural or regional civilisation”.⁷³ According to Tibi, “it is justifiable to judge Islam in terms emanating from cultural modernity, being a source of ‘modern universal knowledge’.”⁷⁴

Conversely, perhaps knowledge took over the task of unfolding the necessities of human reproductive impasses of infertile couples and became the engine for all other scientific needs as well. Islamic religious scholars remain baffled when the unilateral actions of scientists were to keep pursuing their goals regardless. None of the Islamic religious scholars, past or present, have ever laid claim over scientific theory as their own property.⁷⁵ In fact, no religion is entitled to claim any credit for the success of scientific developments, whether reproductive or otherwise. Instead, God manifested His omnipotence as signs of His magnificence in the formation of sun, moon, sky, earth, and stars, and also included the impartation of human knowledge as a token of His wisdom and glory in human creation.

For all religions, especially Islam, to participate independently from any restraints of a bioethical nature and to remain in defiance of modern reproductive technology is to ‘create fault lines of conflict’.⁷⁶ This cannot be a prudent or practicable deliberation when the world’s nation-states are characterised by globalisation that ‘engenders a structure in which nation-states and civilisation interact with one another’.⁷⁷ The

⁷¹ The pursuit of knowledge is central to the Qur’anic message. It is not only confined to contemplation but to discovery which leads to ultimate felicity, by living, acquiring and attaining intellectual self-improvement in the pursuit of virtuous living.

⁷² Ethics and morality form part and parcel of Islamic Shari’ah Law.

⁷³ Op. cit. Tibi, 1994.

⁷⁴ Ibid.

⁷⁵ Op. cit. Mirza, 2007.

⁷⁶ An-Na’im, A. A., 1990. *Toward an Islamic Reformation: Civil Liberties, Human Rights and International Law*. Syracuse, NY: Syracuse University Press, p.185.

⁷⁷ Op. cit. Tibi, 1994.

scientific discoveries of modern human reproductive technologies are being practised in the cross-cultural atmospheres of international relationships, where human rights are also universally recognised. According to Al-Faruqi, 'Bioethical deliberations are inescapable from the religion itself, as it emphasises continued inter-relation of body and mind, within the spiritual realms of ethics and jurisprudence'.⁷⁸ There is, therefore, a greater need to appraise, understand, and establish cross-cultural foundations whereby infertile Muslim couples do not miss out on the benefits and privileges available under modern reproductive developments to overcome their physical inabilities.

The key area of 'moral concern'⁷⁹ is to what extent infertile Muslim couples living in secular societies can refrain from embracing new innovative reproductive procedures for alleviating infertility. This thesis would argue that by reviewing and reinterpreting the existing established Islamic rules, we may find a conciliatory and comparable solution to alleviate infertile couples' predicament by allowing assisted reproductive technology, even though both Sunni and Shi'a Islamic schools of thought have maintained different points of view on this subject. For example, Sunni schools of thought argue that assisted reproduction and surrogacy procedures when making use of third-party sperm tend to 'fracture links of family genetic lineage',⁸⁰ causing a confusion of parenthood, and creating a fear of incest; whereas the Shi'a school of thought disagrees with this by arguing that by viewing the subject from the principle of *ijtihad* and applying the principle of *ibaha*, then the solution can be tenable.

It is encouraging to note that there is a broad agreement among Islamic religious scholars to appraise and discuss ART of infertile Muslim couples at a broader level. For example, a reference can be made to Gad El Hak's statement that "In Islam, treatment of infertility in married couples is encouraged, as it involves preservation

⁷⁸ Al Faruqi, I. R., 1982. *Tawhid: its implications for thought and life*. Kuala Lumpur: International Institute for Islamic Thought.

⁷⁹ Clarke, M., 2011. *Islam and New Kinship*. New York and Oxford: Berghabn Books, p. 31.

⁸⁰ Serour, G. I., 2005. Religious perspectives of ethical issues in ART 1. Islamic perspectives of ethical issues in ART. *Middle East Fertility Society Journal*, 10 (3): 185-190.

of procreation.”⁸¹ A further reference to various ‘guidelines’ which have played a role in the change of attitude of society and individuals in the Muslim World include:

- a) The *fatwa* issued by Al-Azhar, Cairo (1980) (7)
- b) The *fatwa* issued by the Islamic Fikh Council, Mecca (1984)
- c) The Organization of Islamic Medicine in Kuwait (1991)
- d) Qatar University, (1993)
- e) The Islamic Education, Science and Culture Organization in Rabat (2002)
- f) The United Arab Emirates (2002)
- g) The International Islamic Center for Population Studies and Research, Al Azhar University (14-19).

These bodies have stressed the fact that Islam has encouraged marriage, family formation and procreation in its primary sources. The treatment of infertility through the application of ART procedures encourages the preserving of humankind within the framework of marriage, which otherwise remains a condition which cannot be alleviated. In addition, the attitude of patients changes from rejection, doubt, feelings of shame, guilt and secrecy, to happiness and fulfilling when seeking ART procedures in the eighties and openly asking for it in the nineties.

In his article ‘Islamic perspective in human reproduction’, Serour states that:

“The prevention and treatment of infertility are of particular significance in the Muslim world. The social status of Muslim women, their dignity and self-esteem are closely related to their procreation potential, both for family and society as a whole. Childbirth and rearing are regarded as family commitments of both partners and not just biological and social functions. As assisted

⁸¹ Gad El Hak, A. G. E. and Serour, G. I., eds., 2000. *Some gynecological problems in the context of Islam*. The International Islamic Center for Population Studies and Research, Cairo: Al Azhar University.

reproduction was not mentioned in the primary sources of Shari'ah ... [it] was only widely accepted after prestigious scientific and religious bodies and organisations issued guidelines, which were adopted by Medical Council and accepted by concerned authorities in different Muslim countries; these principles have controlled the practices in assisted reproduction centres.”⁸²

The reasoning and explanations of Serour and those of Gad El Haq's guidelines issued at various Islamic conferences,⁸³ have provided four salient dimensions which this thesis will explore in depth.

Firstly, whether the allegorical revelations of the Qur'an⁸⁴ are conclusively understood and unanimously adapted by all religious schools of Islam, with no room for further contemplation, interpretation or deliberation, especially in light of modern reproductive technological innovations and universal changes brought in through enhancement of scientific knowledge.

⁸² Op. cit. Serour, 2005.

⁸³ The guidelines which have so far played an important role in changing the attitude of Islamic societies in the Muslim world include:

- a) *Fatwa* from Dar El Iftaa, Cairo, 1980.
- b) *Fatwa* from the Islamic Fikh Council, Mecca, 1984.
- c) Islamic Organisation for Medical Sciences in Kuwait, 1983.
- d) Qatar University, 1993.
- e) Islamic Organisation for Education, Science and Culture in Rabaat, 2002.
- f) United Arab Emirates, 2002.
- g) International Islamic Centre for Population Studies and Research, al-Azhar University.
- h) i) Gad Al-Hak, 1980. *In Vitro Fertilisation and Test Tube Baby*. Dar El Iftaa, Cairo, 1225: 1: 115: 2313-3228.
- ii) Gad Al-Hak, 1991. Islam a religion of ethics. In: G. I. Serour, ed., *Proceedings of the First International Conference on Bioethics in Human Reproduction Research in the Muslim World*, ICPSR, Cairo: pp. 37-39.
- i) Kuwait *Siasa* Daily Newspaper, 1984. 'Proceedings of 7th Meeting of the Islamic Fikh Council in IVF and ET and AIH', Mecca.
- j) Kattan, I. S., 1991. Islam and Contemporary Medical Problems. In: A. R. A. El-Awadi, ed., *Organisation of Islamic Medicine*. Kuwait: pp. 365-374.
- k) Islamic Organisation of Education, Science and Culture (ISESCO). 1993. *Ethical Reflection of Advanced Genetic Research*, Doha, Qatar.
- l) Serour, G. I., 1992. *Ethical Guidelines for Human Reproduction Research in the Muslim Worlds*. The International Islamic Centre for Population Studies and Research, Cairo al-Azhar University.
- m) Serour, G. I., 1997a. *Ethical Implications of the Use of ART in the Muslim World*. The International Islamic Centre for Population Studies and Research, Cairo al-Azhar University.
- n) Serour, G. I., 2002. Attitudes and cultural perspective on infertility and its alleviation in the Middle East area. In: E. Vayena, ed., *Current Practices and Controversies in Assisted Reproduction*, Report of WHO Meeting, WHO Geneva, pp. 41-49.

⁸⁴ The Qur'an introduces the Prophet Mohammad as the role model (*uswa*) for Muslims. 'Verily in the messenger of Allah ye have a good example for him who looketh unto Allah and the Last Day, and remembereth Allah much.' Qur'an, 33:21.

Secondly, whether the interpretation of the Qur'anic ordinations and elaborations given by Prophet Mohammad, which are the basis of Sunna and Hadith, in light of modern scientific innovations cannot be further explained, enlarged or amended in order to conform to a consistent system of understanding and adherence arriving at a justifiable approach.

Thirdly, whether some of the objections levied by earlier Islamic theologians against surrogacy (not against ART, because it was in-comprehensible at that time) could be reviewed and reconsidered in the light of modern reproductive innovative procedures.

Fourthly, and importantly, whether those human reproductive aspects which are neither forbidden through Qur'anic revelation nor by Sunna and Hadith teachings can be assumed to be permissible; for example, ovum donation. Always, knowing that Islam is a religion of *Yusr* (ease) and not of *Ushr* (hardship),⁸⁵ and “The Shari’ah is not rigid. It is flexible enough to adapt to emerging situations in different times and places.”⁸⁶

One of the main difficulties in this pursuit can be that the religious universe of Islam has never had any ‘fixed entity’.⁸⁷ It can be extremely difficult to achieve a unanimous global opinion on reinterpretations or reviews of any allegorical verses of the Qur’an, Sunna, Hadith, or on modern reproductive technologies and innovations. As Prophet Mohammad had both religious and temporal authority, then it is mainly on this basis that Muslim theologians are still propounding that state and religion cannot be separated; however, Prophet Mohammad is no longer with us. Islamic religious scholars may eschew secularism, but there is nothing in fundamental Islamic values that opposes the process of political secularisation.⁸⁸

⁸⁵ Qur’an, 2:185. “Allah desireth for you ease; HE desireth not hardship for you.”

⁸⁶ Op. cit. Serour, 2005.

⁸⁷ Engineer, A. A., 2002a. The Political Universe of Islam, *Islam and the Modern Age*, 5 (2): 1.

⁸⁸ An-Na’im, A. A., 2008. *Islam and the Secular State*. Harvard University Press.

In view of the then prevailing political conditions, it is thus more of a theological construct than a scriptural injunction. Isma'il R. Al'Faruqi enlarges the discussion by stating that:

“The Qur’anic revelation is a presentation to one’s mind, to reason. There is no papal figure or ruling synod in Islam that can impose its views. ... In Islam religious truth is a matter of argument and conviction, a cause in which everybody is entitled to contend and everybody is entitled to convince and be convinced.”⁸⁹

In addition, the structure of an Islamic state came into being after the death of the Prophet Mohammad. As long as he was alive, all the decisions, whether of a religious, civil or political nature, were made by him. During his lifetime Prophet Mohammad frequently consulted his companions on decisions of a political and civil nature, but never regarding religious injunctions. In fact, he was exhorted by the Qur’an to do so.⁹⁰ It is, therefore, during the lifetime of Prophet Mohammad that “the Islamic society was highly dynamic and full of vitalities”⁹¹ – united in religious and political matters. It is not necessary that the same pattern must always be adhered to; changing circumstance implies the necessity to circumvent the established rules to appreciate, adapt and indeed contribute to modern conditions.

Early Islamic history bears evidence that:

“the character of the Muslim ummah had drastically changed due to conquests of large areas of Roman and Sassanid empires and it was very difficult in these

⁸⁹ <http://iasispodium.blogspot.com/2006/08contraception-and-abortion-in-islam.html>, accessed 20th July, 2008.

⁹⁰ ‘... So pardon them and ask forgiveness for them and consult with them upon the conduct of affairs. And when thou are resolved, then put trust in Allah.’ Qur’an, 3:159.

⁹¹ Engineer, A. A., 1999. *Reconstruction of Islam Thought*. Institute of Islamic Studies, India. Available at: <http://webcache.googleusercontent.com/search?q=cache:evFxPp9gZ3wJ:ecumene.org/IIS/csss11.htm>.

circumstances to apply any coherent political theory, let alone the fundamental principles of values.”⁹²

This pattern of universal unanimity amongst Islamic states and religious scholars has always remained lacking. When issues pertaining to assisted reproduction for infertile couples arise, then these are invariably deferred, due to the global difference of opinions amongst Islamic religious scholars.

Again referring to the early history of Islam on the question of secularism, Fazlur Rahman is of the opinion that “it would not be correct to say that the Umayyad state had become secular and that a full cleavage had occurred between religion and state”.⁹³ Instead, it might be true that even though the same Islamic framework had been retained, the Umayyad state had adopted a different style of administrative traditions than those that had existed during the Caliphate period. The Umayyad system of ruling had brought them greater control of political authority, and at the same time it had diminished ‘a large measure of religious prestige’.⁹⁴

Conversely, although the Companions of Prophet Mohammad were in a sense his followers and disciples, it was inevitable that their minds were ‘imperceptibly intertwined’⁹⁵ with their own mode of behaviour.

“This fact must be borne in mind because it explains why it became difficult for the formal traditionalist at the turn of the century and for subsequent generations to disentangle the strictly Prophetic element from the alleged dicta and facta of the Companions.”⁹⁶

After the death of Prophet Mohammad, the doctrine of infallibility was gradually relaxed, but the Sunnah still remains infallible.

⁹² Op. cit. Engineer, 2002a.

⁹³ Op. cit. Rahman, 1979, p.3.

⁹⁴ Op. cit. Rahman, 1979, p.3.

⁹⁵ Op. cit. Rahman, 1979, p.58.

⁹⁶ Op. cit. Rahman, 1979, p.58.

At a later stage, the task of interpretation of Shari'ah law and its application in specific cases became the prerogative of *muftis* in their designated or individual capacity. Their verdicts were in the form of *fatwas*, which are authoritative but not necessarily binding. The verdict of *muftis* became juriconsultant for *qadis*, who held the position of a judge, and old *jahiliyyah* customs and traditions were gradually Islamised and formed part of Islamic law with modifications. The main emphasis during this period was on faith in action. "This relative narrowness and rigidity of education in the madrasas (theological schools) was, indeed, mainly responsible for the subsequent intellectual stagnation of Islam."⁹⁷ It is decorated to an extreme sense of narrowness and the unilateral self-centred defensive conduct of Islamic religious scholars, leaving scarcely any room for them to appreciate the success of modern human reproductive technological procedures.

Islamic religious scholars are also unable to devote sufficient time either to appraise or to understand fully the unbridled advancement of modern 'secular sciences'. Their antagonist attitude towards the secular system and their endeavours to suppress its encroachment has remained ineffective. Instead, they have succeeded in instilling the minds of middle class Muslim people with Shari'ah law 'backed by dogmatic theology'.⁹⁸ This has been achieved through Sufistic philosophy, which became highly acceptable in Central Asia, Anatolia and also in Africa. Thus, rather than devoting and finding ways of how to co-operate within existing Islamic culture remedies for alleviating infertility, it was viewed as a serious challenge towards Islamic traditional systems. They hold a fervent belief that the old established religious system does not need reappraisal in light of newly discovered scientific innovations or newly formed humanitarian principles of social justice and righteousness, depicting instead the solidarity of modern systems.

According to Islamic religious scholars, the core Muslim concept of law is that it is fundamentally religious and that Shari'ah law rightly ordains the behaviour and attitude of human conduct. The Qur'an's own identity is evidently the basis of Divine Revelation. This may not be entirely feasible as the 'strictly legislative'

⁹⁷ Op. cit. Rahman, 1979, p.5.

⁹⁸ Op. cit. Rahman, 1979, p.5.

portion of the Qur'an is relatively quite small, and the bulk of the traditional cultural systems – for example, the punishment for crimes such as theft and adultery – do not form the ordination of the Qur'an.⁹⁹ “It is a mistake to believe that all those humanly regulated punishments gauged in the 6th century are also suitable for modern Muslim societies.”¹⁰⁰ Again, if modern scientific human reproductive procedures are an expression of moral judgements, then reasons are merely considerations that influence such behaviour.

Fazlur Rahman echoes the earlier statement of this thesis that:

“The *madrasa* system, based to a considerable extent on state-sponsorship and state control, has been generally regarded as the cause of the decline and stagnation of Muslim learning and scholarship. But the *madrasa*, with its restricted curriculum, was the symptom, not the real cause of this decline, although, of course, it perpetuated and accelerated intellectual stagnation.”¹⁰¹

However, the real reason for the decline of the quality of Islamic learning, as Fazlur Rahman asserts:

“was the gradual starvation of the religious sciences through their isolation from the life of lay intellectualism which itself then decayed. ... Even more important was the way in which the *content* of the orthodox sciences was developed so that they would be isolated from any possible challenge and opposition.”¹⁰²

This unilateral defiance mode of conduct hardly made any impression on the progressive approach of scientific innovation, especially in the field of human reproduction. Instead, the gulf between science and religion is gradually becoming insensibly wider.

⁹⁹ Op. cit. Rahman, 1979, pp.68-69.

¹⁰⁰ Op. cit. Rachels, 1985.

¹⁰¹ Op. cit. Rahman, 1979, p.186.

¹⁰² Op. cit. Rahman, 1979, p.186.

Bassim Tibi comments upon these difficulties in a different and more positive manner; he states that:

“... religions, as cultural systems, are in fact symbolic systems offering a way to perceive reality. If these conceptions are unalterable *per se*, as in the case of Islam, even though reality is changing continually, then we are bound to ask whether Islam represents an obstacle to change, as it would seem, in the light of the above interpretation, to obstruct rather than facilitate the cultural reception of change. We cannot answer this question yet; some information exploration will be necessary.”¹⁰³

It is assumed that Bassim Tibi is not commenting upon the ‘core principles’ of Islam, but on the social cultural aspects; the day-to-day emerging changes in human reproduction technologies, which is precisely the argument of this thesis. There is patently an urgent need for a sociologically orientated religious approach to correlate with realities and to act against unwarranted levels of differences. The uncompromising, rigid and steadfast defensive attitude is not helping the cause of human reproductive efforts in alleviating the suffering of infertile Muslim couples. It is becoming necessary to unravel these incomprehensive spiritual arguments into individual components and endeavour to ascertain their validity in relation to developed, modern, successful scientific innovations. These are some of the salient perimeters around which this thesis will endeavour to argue that an amicable way can be found to overcome most of the impediments standing in the way of infertile Muslim couples to overcome their difficulties.

In this pursuit it must always be recalled that religion and science did not set out to survive independently.¹⁰⁴ Creative science, in earlier days, was part and parcel of theology. In fact, in a pluralistic society there is no single religion, or “not even all religions together”,¹⁰⁵ for that purpose can resolve deeply contested religious issues

¹⁰³ Tibi, B., 1990. *Islam and the Cultural Accommodation of Social Change*. Boulder, CO, San Francisco, and Oxford: Westview, p.9.

¹⁰⁴ Op. cit. Goldberg, 1994.

¹⁰⁵ Op. cit. Fadel, 2002, p.39.

such as human infertility without religious hiccups.¹⁰⁶ It is only recently that public officials in some Muslim countries such as Iran have been able to deliberate upon social issues,¹⁰⁷ including assisted human reproduction, without feeling the need for a religious input or being reprimanded for doing so.

When we consider the early Islamic history, which is full of medical innovations and advancements, it becomes evident that there were neither secular nor democratic societies as we know today. Although hundreds of books mentioned in the Arabic bibliographical records have been lost¹⁰⁸ and the detailed analysis of the magnitude of Arabic contribution to medicine is not easy to contemplate, a few famous names from early history can easily be recalled. For example, Abu'l Hasan Ali ibn Ridwan Al-Misri (c. 988-c. 1061) was an Egyptian physician, astrologer and astronomer. He was born in Giza, became well known for his introduction to *al-Tasrif* and was a medical practitioner and educator in the Moorish capital. "Many other well-known Arabic physicians, such as Ibn Masawayh,¹⁰⁹ Ibn Butlan,¹¹⁰ Ibn Jumay,¹¹¹ al-

¹⁰⁶ Ibid.

¹⁰⁷ Greenawalt, K., 2001. Religion and American Political Judgements. *Wake Forest Law Review*, 36: 401-410.

¹⁰⁸ Numerous titles and excerpts have been found in several bibliographic records, such as the *Fihrist*, completed by Muh.b. Ishaq b. al-Nadim; *Ikhbar al-Ulama bi-Akhbar al-Hukama*, by Jamal al-Din Ali al-Qifti (d.1248) and *Uyun al-Anba fi Tabaquat al-Atibba*, by Ahmad b. A. Usaybi, also cited in several editions of many other manuscripts published afterwards.

¹⁰⁹ Yuhanna ibn Masawaih, also known as Ibn Masawaih, Masawaiyh, was an Assyrian physician from the Academy of Gundishapur. He composed medical treatises on a number of topics, including ophthalmology, fevers, headache, melancholia, dietetics, the testing of physicians, and medical aphorisms. He became the personal physician to four caliphs and composed a considerable number of Arabic medical monographs on topics including fevers, leprosy, melancholy, dietetics, eye diseases, and medical aphorisms. It was reported that Ibn Masawayh regularly held an assembly of some sort where he consulted with patients and discussed subjects with pupils. Ibn Masawayh apparently attracted considerable audiences, having acquired a reputation for repartee. He translated various Greek medical works into Syriac. The "Disorder of the Eye" (*Daghal al-'ain*), which is the earliest systematic treatise on ophthalmology extant in Arabic and the Aphorisms, the Latin translation of which was very popular in the Middle Ages, was written by him. He died in Samarra in 857 CE.

¹¹⁰ Ibn Butlan was an Iraqi Christian physician. He wrote the *Taqwim al-Sihhah* [The maintenance of health]. It pertained to matters of hygiene, dietetics, and exercise, emphasising the benefits of regular attention to the personal, physical and mental well-being. *Taqwim al-Sihhah* gained extreme popularity and had an influence on early modern Arabic culture.

¹¹¹ Abū al-Makārim Hibat Allāh ibn Zayn al-Dīn Ibn Jumay was an Egyptian physician who received honorific titles such as Ustadh Zamanih (Master of His Age). He became famous for having prevented a person having a cataleptic fit from being buried alive. He was the author of a number of medical writings, including al-Irshād li-maṣāliḥ, dedicated to al-Baysanī, the vizier to Saladin. Amongst others treatises, he wrote a short treatise on the city of Alexandria and one on what to do when a physician is not available.

Baghdadi,¹¹² al-Kutubi,¹¹³ al-Razi¹¹⁴ and, of course, Ibn-Sina¹¹⁵ fall into this category.”¹¹⁶ ‘In the late 10th century, North Africa and Spain witnessed remarkable activity in medicine. By then Qayrawan^[117] and Cordova^[118] rivalled Baghdad and Rayy^[119] in cultural productivity.’¹²⁰ These eminent physicians contributed remarkably to the cause of humanity respectively. Sadly, they were unaware of the causes of infertility and IVF procedures as known today. There seems to be a great injustice in not recognising or admitting all embracing medically proven human reproductive procedures, even though these were discovered only a few decades ago.

Equally, it is basically the social and academic culture of recent time which laid the foundation of modern surrogacy procedures, ART and their further developments. This has primarily been achieved by science redeeming itself in religious encounters

¹¹² Hibat Allah Abu'l-Barakat al-Baghdadi (c. 1080-1165) was a physicist, psychologist, physician and scientist from Baghdad, Iraq. His Hebrew birth name was Nathanel. His thought influenced the Illuminationist school of classical Islamic philosophy.

¹¹³ Yusuf ibn ismail al-kutubi was known as Ibn al-Kabir (13th-14th C AD) a scholar and physician who worked in the palaces of the Abbasid caliphs in Baghdad. He is known for his comprehensive pharmacology titled “Ma la Yasa’u al-Tabiba Jahlahu” (what a physician cannot afford to ignore), often referred to by its shortened title “Jam al-Baghdadi” (Baghdadi Collection), which was written in Arabic in 1311. Several thousand medicinal herbs are identified in the compendium besides natural drugs and recipes. He also wrote that a bandage with a few drops of castor was good for treating headaches. Beverages containing castor and vinegar were also used to treat abdominal pain.

¹¹⁴ Al-Razi was another famous physician, who for the first time elaborated the seven principles of the preservation of health. He defined fever as an unnatural heat emanating from the heart and arteries and affecting the entire body with heat. In his book *al-Fakhi fi al-Tibb*, he explained that good health is God’s gift. By preserving it one renders the best of his life.

¹¹⁵ Ibn Sīn¹, commonly known in English by his Latinised name Avicenna (c. 980-1037), was a foremost physician and philosopher of his time. He was also an astronomer, chemist, geologist, Hafiz, Islamic psychologist, Islamic scholar, Islamic theologian, logician, paleontologist, mathematician, Maktab teacher, physicist, poet, and scientist.

¹¹⁶ Hamarneh, S., 1971. The Physician and the Health Profession in Medieval Islam. *New York Academy of Medicine*, 47 (9): 1088-1089.

¹¹⁷ Kairouan, also known as Kirwan, Al Qayrawan, the capital of the Kairouan Governorate in Tunisia, the fourth most holy city in Islam, and also a UNESCO World Heritage site. The city was founded by the Arabs around 670 in the period of Caliph Mu’awiya, becoming an important centre for Islamic and Quranic learning, and thus attracts a large number of Muslims (next only to Mecca and Medina) from various parts of the world. The holy Mosque of Uqba is situated in the city.

¹¹⁸ Cordova may refer to Córdoba, in Spain.

¹¹⁹ Rayy is a city in the old Persian region of Media.

¹²⁰ Op. cit. Hamarneh, 1971.

‘and by taking bolder strides’ in modern reproductive technologies, categorised as economic developments outside the realms of religious teachings.¹²¹

Admittedly, science and religion have been interrelated, “complementary and not contradictory”,¹²² since the beginning of human history. While religion and science have enjoyed a relatively close affinity until the middle of the 18th century, religions, nevertheless, retained a powerful influence over their followers. In contrast, science, in spite of unravelling, achieving and sustaining mysteries of human reproduction, has seldom gained enough sense of belief or conviction of its achievements from religious scholars. In contrast, religions profess to fulfil the needs of humans at all times universally and lead followers to contentment, relief, solace, peace and to protection and security. Whether all the scientific advancements in human reproduction technologies are embraced and accepted by all the religions is entirely a different subject matter. For example, bioethics, a relatively new term, has been mainly linked with secularism and is no longer easily recognised or even comes under the domain of religion traditions.¹²³ Similarly, assisted reproduction technology does not come into this equation at all; nor was it known or even contemplated during the early religious histories.

Although science claims to share its achievements with all humanity regardless of their religious beliefs, there are in fact some religions, especially the Sunni sect of Islam, that do not condone ART procedures when donation of sperm or ovum from a third party is involved. For example, infertile Muslim couples are not allowed to accept the donation of a third party’s sperm and ova. Even Christian Catholicism regards this as an unnatural birth. This divergence between religion and science is further distorted when infertile Muslim couples decide to live in a secular society, where Islamic Shari’ah law does not provide any concessions to apply scientific methodology in alleviating infertile couples’ predicaments. It has thus created a marked distinction between faith and scientific development. As a result, the

¹²¹ Petre, J. *The Daily Telegraph*, dated 26th March, 2004.

¹²² Yaqoob, S., 2000. *Towards Islamic Psychology*. Paper presented at the International Conference on ‘Muslim Women in Science: A Better Future’, Fez, Morocco, 22-24 March, 2000. Organised by The Royal Academy of Science International Trust (RASIT) and The Islamic Educational Scientific and Cultural Organisation (ISESCO).

¹²³ Op. cit. Serour, 2005.

National Academy of Sciences in the US maintains that “Religion and science are separate and mutually exclusive realms of human thought whose presentation in the same context leads to misunderstanding of both scientific theory and religious beliefs.”¹²⁴

Scientific rational knowledge derived through consistent experimental findings has been readily acceptable to the masses, with the exception of infertile Muslim couples, who are restricted from benefiting from it due to their religious beliefs. According to Schenker, this is because:

“Development in science and technology in reproduction raises new religious questions that do not always have clear answers. The role of theology in bioethics is foremost to clarify for the different religious communities the perceived attitudes toward these developments.”¹²⁵

During the past few decades, Islamic societies such as Iran and Lebanon have found answers to a variety of existing cultural, ethical and moral problems through the advancement of medical technology and “perhaps nowhere are these more pressing and more complex than in the area of [assisted] reproductive technology”.¹²⁶

In fact, the product of a multifarious civilisation is invariably manifested in respective cultural symbolisms, which are different to one another in their norms and values. Infertile Muslim couples, due to their cultural differences and religious convictions, have become a prime audience anxious to acquire the benefits of innovative reproductive treatment by falling in line with the norms of secular society. However, the primary question of how to overcome existing Islamic cultural systems’ indifference and diversities amongst Islamic religious scholars has spread across the globe. Serious disparities are common due to a strict and subjective

¹²⁴ National Academy of Sciences, USA, 1981. Washington DC.

¹²⁵ Schenker, J. G., 2000. Women’s reproductive health: monotheistic religious perspectives. *International Journal of Gynaecology & Obstetrics*, 70 (1): 77-86.

¹²⁶ Hinman, L. M., 2004. *Reproductive Technology and Surrogacy: an Introduction to the Issues*. Available at: [http:// www.ethics.sandiego.edu/LMH/Papers/Introduction](http://www.ethics.sandiego.edu/LMH/Papers/Introduction).

interpretation of the tenets of Islam. Tibi defines it as “defensive cultural attitudes”.¹²⁷

Perhaps, this can best be achieved by appraising and appreciating each other’s point of view, leading ultimately towards regulating cross-cultural understandings within religious groups in a secular society. After all, the three main Abrahamic religions have many similarities and common cultural concepts¹²⁸ which originated in the ‘cradle of religion’ and later extended to other parts of the world. It seems sensible to assimilate cultural concepts of different religions and to harmonise regulations.¹²⁹ However, Samuel Huntington is of the opinion that:

“Western democracy is permissive and thus allows its adversaries to undermine it by its own means, whereas the Shari’ah is superior and pure. No one can assault the Shari’ah from within, given that it draws clear fault lines between itself and others. This argument resembles the reasoning along the fault lines of conflict between civilisations.”¹³⁰

Huntington’s statement has drawn attention to the fault lines lying ‘between civilisations’ which are either irrelevant or incomprehensible. The root cause is not between civilisations or in changing the mode of existence with the progressive and changing circumstances. It is as if to refute all scientific achievements simply by adopting a defensive attitude and not understanding the benefits one can achieve by reconciling to modern behaviours. One seldom brings in such arguments under the canopy of civilisations for discussion or solution.

¹²⁷ Tibi, B., 1988. *The Crisis of Modern Islam*. Trans. J. von Sivers. Salt Lake City: University of Utah Press.

¹²⁸ Op. cit. Tibi, 1994.

¹²⁹ Nardin, Terry. *Law, Morality, and the Relations of States*. 1983. Princeton, NJ: Princeton University Press, 27-48.

¹³⁰ Huntington, S. P., 1993. The Clash of Civilisations? *Foreign Affairs*, 72 (3): 22-49.

In fact, to clarify the reasoning behind Shari'ah law, Bassam Tibi¹³¹ quotes An-Na'im, who stated that Shari'ah is:

“not the appropriate vehicle for Islamic self-determination in the present context. ... Shari'ah was in fact constructed by Muslim jurists. ... Although derived from ... the Qur'an and Sunna, Shari'ah is not divine because it is the product of human interpretation of those sources.”¹³²

Aside from the bondage of religious guidance, cultural and traditional restrictions, what infertile Muslim couples are seeking is to fulfil their unmitigating desire to have their own child; a baby bearing their genetic features and maintaining their lineage.¹³³

Many infertile Muslim couples are constrained to ascertain whether modern reproductive technologies, if undertaken, are within the realm of Qur'anic revelations. While “each person's religion, including the option of having no religion, is strictly a personal matter”,¹³⁴ and “there is no compulsion in religion”,¹³⁵ modern reproductive technologies do not form an exception for Muslim couples against the matter of the ordained religious credence of beliefs and convictions to fulfil their wishes. Muslims, while ascribing to God's favours for activities that benefit His creation, take note of issues that “are prescribed by law and are necessary in a democratic society in the interest of public safety, for the protection of public

¹³¹ Op. cit. Tibi, 1994.

¹³² Op. cit. An-Na'im, 1990, p.185.

¹³³ There is an authenticated story from Prophet Mohammad that a man went to visit the Prophet and the Prophet said to him that he had received the news that he had a baby. The man replied, “That is correct, messenger of Allah; he was born yesterday.” The Prophet Mohammad replied, “This baby who was born yesterday, who does he look like, who does he resemble, does he resemble you or does he resemble his mother?” The man replied, “He will either resemble me or he will resemble his mother. Isn't that the way?” The Prophet Mohammad said, “No, do not say that. If the sperm falls into the womb, Allah brings forth every characteristic between it and between Adam.” Meaning the embryo will inherit characteristics from as far back as Adam. Which literally means that the genes which transmit these characteristics are able to deliver to you these characteristics from your oldest forefathers, even if it was 10 million years ago. This is exactly what is being understood through modern reproduction as what was said by Prophet Mohammad some 1400 years ago. ‘Human Reproduction in the Qur'an’, contributed by Raeid Jewad (fe95rrj@brunel.ac.uk).

¹³⁴ Council of Europe, Parliamentary Assembly recommendation 1720 (2005).

¹³⁵ Qur'an 2: 256.

order, health or morals, or for the protection of the rights and freedom of others”.¹³⁶ Even by heeding such instructions, infertile Muslim couples are unsure as to whether the same conditions are applicable in other Muslim countries or all Islamic religious scholars are unanimously agreeable to such prescriptions. In the absence of any authenticated answer forthcoming from Islamic religious scholars, they feel unduly restricted to fulfil their legitimate claims.

Equally, when infertile Muslim couples conform to Islamic religious tenets, they become mindful that by putting their religious teachings into practice they may violate or infringe upon the human rights or freedom of others, as clearly laid down in the Council of Europe recommendation that “in all their plurality, as a form of ethical, moral and ideological expression appreciating ‘each person’s religion, including the option of having no religion, is a strictly personal matter’.”¹³⁷ Secular societies are not without religions or they behave against religious beliefs. If anything, secular societies invite people of religious beliefs to bracket their theological convictions while addressing contemporary cultures.

It may be of interest to record that although with the advancement of scientific success, whether in bioethics research or otherwise, some religious practices are on the decline.¹³⁸ What is undeniable though is that religion has become a central issue of debate in society,¹³⁹ resulting in ‘believing without belonging’,¹⁴⁰ and ‘in spite of the decline in formal religious practice, questions of faith are attracting increasing

¹³⁶ Article 9.2 of the European Convention on Human Rights.

¹³⁷ Council of Europe, Parliamentary Assembly, Recommendation 1720 (2005).

¹³⁸ <http://assembly.coe.int/Documents/WorkingDocs/Doc07/EDOC11298.htm>. The problem of definition means that statistics of church membership are notoriously unreliable; but in England, for example, it is generally agreed that in the twenty years from 1980 membership of the Church of England declined by about 25 percent and most of the other mainstream churches suffered similar losses. At the same time, however, there appeared to be little diminution in the number of people who claimed to ‘believe in God’ or to hold some kind of spiritual values; in the 2001 UK Census 72% identified themselves as ‘Christians’.

¹³⁹ Roman Catholics, members of the Orthodox Church, Evangelists and Muslims seem to be the most active here.

¹⁴⁰ <http://pewforum.org/events/?EventID=97>, accessed 2nd December, 2008.

attention’.¹⁴¹ It would be interesting to see if Islamic religious scholars contribute to such debates.

It is evident that religious ideas develop slowly, but these are seldom categorised as an element of historical evolution.¹⁴² In contrast, the success of ART is unabatedly fast, lending support to secularism, and the contribution of religious scholars is sadly negligible.¹⁴³ They have refrained from discussing comprehensively some of the important issues relating to infertility – for example, surrogacy, abortion, or organ donation – even though they are mindful that ‘the 21st century is to be the century of the life sciences’.¹⁴⁴ Yet, unlike Catholicism, Islam has embraced ART in accordance with the provisions of Shari’ah law.

These issues are meaningful and important for infertile Muslim couples, for infertile couples of other religions, and also for those who are “neither exclusively secular nor exclusively religious, but are rather a complex combination of both the religious and the secular, with religious and secular phenomena”.¹⁴⁵ According to Martin Marty, “our world is neither primarily religious, nor predominantly secular. It is religious. And secular. At the same time.”¹⁴⁶ Islamic religious scholars, when at variance with progressive scientific developments in secular societies or otherwise, find it difficult to realise that such successes are not only beneficial but also do not intend to implicitly or explicitly make their firm-held beliefs spurious. Indeed, any dissatisfaction manifested would only create further complexity towards resolving human reproductive issues. It would be of benefit to adjudicate issues of a contemporary nature through the prescribed spectrum of legal categories, such as *haram* (forbidden), *makrooh* (reprehensible but permitted), *muhab* (legally neutral),

¹⁴¹ Council of Europe, Parliamentary Assembly Doc. 11298, *State, religion, secularity and human rights*. 8th June, 2007. <http://assembly.coe.int/Documents/WorkingDocs/Doc07/EDOC11298.htm> p.4.

¹⁴² Ibid.

¹⁴³ Dirie, A., 2004. The Brave New Era of Biomedicine: Where do Muslims Stand? *Islam Online-Health & Science Section*. Available at: www.islamonline.net/English/Science/2004/02/article01.shtml. (Accessed 7th February, 2009).

¹⁴⁴ Ibid.

¹⁴⁵ Marty, M. E., 2003. Our religio-secular world. *Daedalus*, 132 (3): 42-48.

¹⁴⁶ Ibid.

mandoob (encouraged) and *fardh* (legally required).¹⁴⁷ This line of reasoning should also be applied when invited to consider modern reproductive technologies.

Early Islamic development, amidst Nestorian and Monophysite Christians, followers of Judaism, various pagan and animistic beliefs,¹⁴⁸ was a pattern of historical nature. Therefore, the majority of Islamic religious scholars view Islamic bioethics as a natural extension of Islamic law.¹⁴⁹ It is universally maintained by them that they have consistently applied logic to issues of public interest and consulted local Arabic customary precedents, while arriving at legal positions through the Qur'an, Sunna and Hadith. However, so far they have not felt it necessary to directly address issues of a contemporary nature. The indications are that more and more Islamic religious scholars are less willing to use gamete donation and surrogacy.¹⁵⁰ It can be argued that the prevailing "attitudinal indicator"¹⁵¹ of infertile Muslim couples can be no different than for any other population in a secular society when it comes to using modern reproductive techniques in solving infertility problems.

Religious cultures and beliefs often influence the ethical and moral concepts within members of the same faith and thus negotiate their identity within multicultural societies.¹⁵² Quite a few studies have been undertaken where it became evident that religious beliefs and values have impressed upon physicians in forming their decisions.^{153, 154} According to Curlin:

¹⁴⁷ Kamali, M. H., 1997. *Principle of Islamic Jurisprudence*. The Islamic Text Society.

¹⁴⁸ Islam and Arabs: A Concise History; Mid East Web. Available at: www.mideastweb.org/islamhistory.htm. (Accessed 7th June, 2012).

¹⁴⁹ Haleem, A. M., 1993. Medical Ethics in Islam. In: A. Grubb, ed., *Choices and Decisions in Health Care*. London: John Wiley & Sons.

¹⁵⁰ Chliaoutakis, J. E., Koukouli, S. and Papadakaki, M., 2002. Using attitudinal indicators to explain the public's intention to have recourse to gamete donation and surrogacy. *Human Reproduction*, 17 (11): 2995-3002.

¹⁵¹ Ibid.

¹⁵² Bartkowski, J. and Read, J., 2003. Veiled submission: gender, power, and identity among evangelical and Muslim women in the United States. *Qualitative Sociology*, 26: 71-92.

¹⁵³ Koenig, H. G. and Levin, J. S., 1998. The religion-health connection: evidence, theory, and future directions. *Health Education and Behaviour*, 25: 700-720.

¹⁵⁴ Astrow, A. B., Puchalski, C. M. and Sulmasy, D. P., 2001. Religion, spirituality, and health care: social, ethical, and practical considerations. *American Journal of Medicine*, 110: 283-287.

“Patients’ religious commitments and religious communities are known to influence their experiences of illness and their medical decisions. Physicians are also dynamic partners in the doctor–patient relationship, yet little is known about the religious characteristics of physicians or how physicians’ religious commitments shape the clinical encounter.”¹⁵⁵

In the absence of any authenticated guidelines from Islamic religious scholars, clinicians may be inclined to suggest to their infertile Muslim couples that they attend to their religious duties and consciously make efforts to apply their religious beliefs to other areas of their life. Clinicians may refrain to describe their spiritual beliefs as distinct to the patient’s which are more tightly guided and supervised.

Islamic ethical, moral and social discussions with infertile Muslim couples “have varied due to the time and place, and the faith and the cultural tradition of society”.¹⁵⁶ It is, therefore, well established that clinicians can be greatly influenced by multi-cultural and multi-faith societies because of the migrations and mass movements of people, including Muslim couples. This new setting may require a new set of ethical principles to resolve the new moral dilemmas.¹⁵⁷

The attitude and behaviour adopted by Islamic religious scholars against modern human reproductive technologies, surrogacy and ART, lineage and surrogacy, necessitate enquiring whether the allegorical revelations of the Qur’an are conclusively understood and unanimously adopted by all the religious schools of Islam, and that there is no room for further contemplation, interpretation or deliberation. Undoubtedly, Shari’ah laws are man-made laws, and no evidence has been produced so far that human reproductive aspects are forbidden due to Qur’anic verses. Anwar A. Qadri, in his book *Islamic Jurisprudence in the Modern World*, is of the view that:

¹⁵⁵ Curlin, F. A., Lantos, J. D., Roach, C. J., Sellergren, S. A. and Chin, M. H., 2005. Religious characteristic of US physicians: a national survey. *Journal of General Internal Medicine*, 20 (7): 629-634.

¹⁵⁶ Aksoy, S. and Tenik, A., 2002. The ‘four principles of bioethics’ as found in the 13th century Muslim scholar Mawlana’s teachings. *BMC Medical Ethics*, 3 (4).

¹⁵⁷ Ibid.

“Man-made laws, unable to satisfy human needs, are always subject to amendment and are modified from time to time, according to the changes in man’s social life. The principles of the Shari’ah of Islam, which include also the laws needed for society, in spite of changes in the social set-up, on the one hand, remain perennial and fixed; they cover every kind of change which may come about in the society. ... The modern systems, however, work only for external actions and the modern oriental laws are binding only on the external conduct of the people. As opposed to this, the Shari’ah works not only towards binding external human actions, but also towards his internal conscience.”¹⁵⁸

Islamic religious scholars, in light of modern scientific reproductive technological procedures, “the fastest growing areas in medicine”,¹⁵⁹ offering specifically designed treatments to infertile couples, should review reproductive bioethics which have remained controversial through detailed discussion.¹⁶⁰ They may thus cultivate an amicable understanding of existing religious interpretations to help infertile Muslim couples who face an avalanche of criticism from the Muslim community when deviating from Islamic ethical guidance.

Overall, “Islam and Muslims are underrepresented in the medical literature and the influence of a physician’s cultural beliefs and religious values upon the clinical encounter has been understudied”.¹⁶¹ If this is true, then according to Dirie Ahmad:

“the stance of Muslim on these contentious life-touching issues is very wanting, and there has been no collective stance, other than a few declarations issued by Ulama [Muslim scholars] of certain countries. Even these statements have been mere declaration of prohibited or allowed (*haram* or *halal*) for a

¹⁵⁸ Qadri, A. A., 1999. *Islamic Jurisprudence in the Modern World*. India: Taj Publishers. p.29.

¹⁵⁹ Haji, A. N., 2003. Assisted Reproduction – Islamic Views on the Science of Procreation. *Eubios Journal of Asian and International Bioethics*, 13: 59-60.

¹⁶⁰ Op. cit. Curlin, 2005.

¹⁶¹ Padela, A. I., 2008. The perceived role of Islam in immigrant Muslim medical practice within the USA: an exploratory qualitative study. *Journal of Medical Ethics*, 34 (5): 365-369.

given product or technology without giving explicit information on the issues surrounding it.”¹⁶²

This thesis intends to highlight, argue and discuss critical areas of contemporary issues concerning assisted human reproduction, in relation to the central focus points of Islamic religious scholars’ debates undertaken so far. It further intends to elaborate and explain the focal points of assisted reproduction legislation and lineage procedures, which are ethically, socially and morally gaining great interest.

Thus, in the field of modern human reproductive technologies, Islamic Religious Scholars of Islamic societies such as Iran, Egypt and Lebanon have taken a lead in resolving a variety of existing cultural, ethical and moral problems which they found were ‘more pressing and more complex’.¹⁶³ Through the application of principles of Ijtihad and ibaha, and by reflecting and condoning the donation of sperm and ovum, they virtually swept aside some of the religious objections and have adapted modern scientific human reproductive procedures.

One of the most convincing reasons which they took into consideration was that “neither the man nor the environment is the same as a million years ago”,¹⁶⁴ and that the demand of the new age cannot be easily ignored due to stereotype approaches.

In addition, some of the prominent modern Islamic Religious Scholars, such as Rahman,¹⁶⁵ Qadri,¹⁶⁶ Prof. Ramadan,¹⁶⁷ Prof. An Na’im,¹⁶⁸ Amina Wadud,¹⁶⁹ *and* Leila Ahmed,¹⁷⁰ to name a few, emphatically maintained that man-made laws, whenever unable to satisfy human needs, could be subject to amendments and be

¹⁶² Op. cit. Dirie, 2004.

¹⁶³ Hinman, L. M., 2004. *Reproductive Technology and Surrogacy: an Introduction to the Issues*. Available at: <http://www.ethics.sandiego.edu/LMH/Papers/Introduction>.

¹⁶⁴ Shahid, A., 2007. Human Genetic and Reproduction Technologies: A Muslim’s Understanding of the Secular Perspective. *Journal of the Islamic Medical Association*, 39.

¹⁶⁵ Rahman, F., 1966. *Islam*. The University of Chicago Press, Chicago.

¹⁶⁶ Qadri, A. A., 1999. *Islamic Jurisprudence in the Modern World*. India: Taj Publishers. p.29.

¹⁶⁷ Ramadan, T., 2009. *Radical Reform. Islamic Ethics and Liberation*. Oxford University Press.

¹⁶⁸ An-Na’im, A. A., 2008. *Islam and the Secular State*. Harvard University Press.

¹⁶⁹ Wadud, Amina, 2008. *Inside The Gender Jihad Women’s Reform in Islam*. Oneworld Oxford.

¹⁷⁰ Ahmed, Leila, 1992. *Women and Gender in Islam*. Yale University Press: New Haven and London.

modified from time to time, according to the changes taking place in human social life. Maulana Mawdudi, an eminent Muslim scholar, distinguished himself by advocating an historical cultural and traditional break, by interpreting the fundamental principles of Islam in accordance with the need of the time.¹⁷¹

Central to modern scientific human reproductive discoveries, Muslim infertile couples, due to their cultural differences and religious convictions, have become the prime audience in Muslim as well as in other countries. Chapter One enlarges upon the forces shaping both ethics and morals constructed from a physician's and clinician's point of view, especially with regard to family structures and social changes brought about due to migration. Chapter Two mainly argues and discusses human reproduction as revealed through the Qur'an. The concept of secularism with regard to Muslim infertile couples and their religious beliefs and convictions has been elaborated in Chapter Three. Chapter Four enlightens upon the impact of modernity in Islam and its impact on Muslim infertile couples. Chapter Five introduces the arrival of Muslims in Great Britain and the influence of a secular state in their day-to-day life. Discussions on the precepts of ethics and morality in relation to lineage and adoption can be read in Chapter Six. Chapter Seven takes on board and discusses two main issues, i.e. the emancipation of women and their undue oppression. These were deemed to be essential to further support the argument of this thesis. Chapter Eight considers and argues for the importance of interpretation of the allegorical verses of the Qur'an. Finally, the chapter designated as 'Conclusions' is a summary of some of the salient topics discussed and argued through the previous chapters of the thesis.

Chapter One

¹⁷¹ Mawdudi, S. A. A., 2000. UK Islamic Mission, 202 North Gower Street, London.

Islam and Assisted Reproduction in a Secular Society

Introduction

Developments in reproductive medicine present equal challenges to those of religious faiths and of non-religious faiths. The nature of these problems often reflects core beliefs of religious/non-religious convictions or positions maintained otherwise. For example, there are different theological and ethical stands erected with regard to modern human reproduction procedures, often denying the moral status of an embryo and the process of conception through sperm donation or ovum donation.

Right from the inception of human reproduction procedures, both Shi'ah and Sunni Islamic schools held the view that the use of assisted reproduction procedures would be unacceptable if the donation of sperm or ovum were from a third party. Even from a Catholic point of view, the process of conception or the manipulation of an embryo was considered against the laws of nature.

From a physician/clinician's point of view, it may be difficult to understand and appreciate how the old established interpretations of religious dogmas can deprive infertile couples benefiting from modern scientific technologies. While adherence to religious guidelines may hamper the relationship between physician and patient, it nonetheless makes it abundantly clear what is and what is not acceptable to members of a particular faith. For example, Inhorn, in her article 'Making Muslim Babies', categorically asserts that 'gamete donation is not allowed in Islam'.¹⁷² She further states that, when accepting the application of IVF procedures, Islamic religious scholars lay down certain conditions pertaining to frozen embryos. Firstly, the frozen embryos are the exclusive property of the infertile couple and these can be implanted in a successive cycle, but only during the duration of the marriage contract. If the

¹⁷² Op. cit. Inhorn, 2006c.

marriage contract has been rescinded or the husband has passed away, then the ex-wife or the widow is not allowed to utilise the frozen embryos. This position would equally apply to an ex-husband or widower.¹⁷³ Inhorn's statements in all probabilities manifest the unified Islamic position on the issue by forbidding Muslim couples from alleviating infertility. However, according to Serour, Islamic principles adapt to the justifiable needs created by circumstance. Such adaptation is not fixed in time, but it addresses the genuine needs of Muslim people as they arise.¹⁷⁴

Islam is not a monolithic faith, nor does it have clear prescriptions for all aspects of life. Ethical problems for Muslims, and for those of other faiths, are grounded in their daily lives and arise through a variety of circumstances. Solutions applied in one set of circumstances cannot set precedence for all similar problems. Furthermore, within Islam there is a diversity of views and continued debate, reflecting differences not only between different sects, cultural backgrounds and schools of jurisprudence, but also the divergence of views within these groups themselves. Thus, a consequence of this is uncertainty, for both Muslim clinicians and for patients, regarding the ethical position, and this is particularly so where science and medicine are developing rapidly, as in the field of reproduction. In addition, when a Muslim clinician is to make a decision concerning an infertile couple, whether Muslim or non-Muslim, that decision has to be in the best interest of the couple. The decision should not only be based on his/her own knowledge and experience, it also has to take into consideration Islamic beliefs and convictions, which may be important to the couple. Religious beliefs can deeply affect the behaviours, practices and decision-making policies of an infertile couple. It can thus be a difficult decision for the professional clinician to offer products resulting from advances in medical technology,¹⁷⁵ propounding new ethical and legal issues for the couple.¹⁷⁶

¹⁷³ Inhorn M. C., 2006b. Fatwas and ARTs: IVF and Gamete Donation in Sunni v Shi'a Islam. *Journal of Gender, Race and Justice*, 9: 291-317.

¹⁷⁴ Serour, G. I., 1993a. Bioethics in Artificial Reproduction in the MuslimWorld. *Bioethics*, 7 (2/3): 207-217.

¹⁷⁵ Larijani, B. and Farzaneh, Z., 2007. Ethical and Religious Aspects of Gamete and Embryo Donation and Legislation in Iran. *Journal of Religious Health*, 46: 399-408.

¹⁷⁶ Shahid, A., Hossan E., Fadel, H. E., 2005. *Islamic Medical Ethics*. The IMANA Ethics Committee.

That there are different views in Islam is not surprising. Islam is culturally pluralistic, with an estimated 1.8 billion Muslims living in more than 83 countries, speaking more than 200 languages/dialects in a diverse set of social, political and economic circumstances.¹⁷⁷ Human conditions are continually changing with developments in science and technology, and not least through urbanisation and movements of people. Major changes in people's lives can occur within a generation, with accompanying changes in the views of marriage, family and community. Views of sexuality in the UK, for example, have changed radically since the 1960s. The role of women within society has also undergone radical reform. Muslims cannot remain unaffected by these developments, and changes in the structure of Muslim families reflect changes in their economic and social circumstances. Changes in family structure, particularly from an 'extended' set-up to the smaller 'nuclear' family,¹⁷⁸ may change the relationship between identity and lineage, and the impact of infertility on Muslim couples affected by it.

It is the specific argument of this thesis that the importance of lineage for Muslims in relation to identity is: a) historically cultural and social rather than spiritual, and b) that Islamic ethics can and should adopt a more pragmatic view of the family and the benefits of reproductive technology hitherto regarded as challenging to those of Islamic faith. Principally, it will be proposed that:

- a) The Qur'anic *ayat* revealing the relationship between lineage and identity was for the benefit of social cohesion and inheritance rather than for spirituality or biological determinism; it addresses legalistic rather than moral issues.
- b) Islamic ethics on gamete donation can and should be contextual; addressing the specific needs of Muslims in the society they form a part of, rather than applying a single-rule-fits-all approach.

In laying the foundation for this argument, this chapter considers:

¹⁷⁷ Op. cit. Nawal, 1995.

¹⁷⁸ Wadud, A., 2006a. *Inside the Gender Jihad; Women's Reform in Islam*. Oxford: Oneworld. pp.131-140.

a) Views of Islamic religious scholars on the problems of infertility, lineage and identity, and the use of assisted reproduction.

b) Perceived cultural, social and religious obstacles to benefiting from the full range of assisted reproduction for Muslims in a secular society.

The point can be argued by taking the example of Iranian Muslim couples. It is estimated that between 10 and 15%¹⁷⁹ of Muslim couples in Iran experience infertility, but these “infertile couples do not have any legal barriers to take advantage of these technologies”.¹⁸⁰ Haji Ahmad has also drawn comparisons by stating that: “Infertility affects between 10 and 15% of couples where the incidence of infertility in male and female are approximately the same.”¹⁸¹ Following the endorsement from the Iranian Cabinet Council,¹⁸² ‘there has been a rapid flourishing of new reproductive technologies in Iran during the past several years’.¹⁸³ However, for many other couples outside Iran the use of ART may present specific problems, particularly where this involves the donation or receipt of gametes from a third party. One of the criteria to allow the alleviation of infertility in Iran is that infertility stigmatises and creates serious problems in marital relationships, in addition to the sadness and lack of fulfilment experienced by being childless.

According to Larijani:¹⁸⁴

“Religion remains the ultimate source of knowledge for those seeking treatment for infertility in Iran, and is so powerful to legitimising the practice of ARTs and providing spiritual guidance. Medical knowledge, next to

¹⁷⁹ Ghafourzadeh, M., Karimi, M., Karimzadeh, M. A. and Bokai, M., 2004. Comparison between Two Methods of Ovulation Induction: Clomiphene alone and Clomiphene+Tamoxifen in PCOS Patients. *Iranian Journal of Reproductive Medicine*, 2 (2): 74-77.

¹⁸⁰ Op. cit. Larijani and Farzaneh, 2007.

¹⁸¹ Op. cit. Haji, 2003.

¹⁸² Embryo Donation in Infertile Spouses Act.

¹⁸³ Hoodfar, H., 1995. Population policies and gender equity in post-revolutionary Iran. In: C. Makhoul, ed., *Family, gender and population in the Middle East: Policies in Context*. Cairo: American University of Cairo Press.

¹⁸⁴ Op. cit. Larijani and Farzaneh, 2007.

religion, is the most powerful factor in influencing the reproductive decisions that people make.”¹⁸⁵

Tremayne-Sheibani’s article supports the argument further by stating that: “Fortunately, religious leaders in Iran have shown remarkable open-mindedness and flexibility towards embracing innovations in science and technology, including the use of modern reproductive technologies.”¹⁸⁶

Infertility problems may present themselves in a variety of ways, depending on the society in which the couple lives. For example, in Islamic States such as Pakistan, Indonesia and Tunisia, the choice of gamete donation is unlikely to be available, whereas in secular societies these procedures are offered routinely in fertility clinics, presenting Muslims with a broader set of reproduction choices available. The assumption made earlier by Inhorn,¹⁸⁷ that Islam prohibits such choices, may also stand as a barrier against Muslim clinicians willing to offer such services. Infertile Muslim couples being enshrouded in misconceptions about what is or is not prohibited may deprive them of making use of modern scientific human reproduction benefits.

¹⁸⁵ Tremayne-Sheibani, S., 2006. Whither Kinship? New Assisted Reproduction Technology Practices, Authoritative Knowledge and Relatedness — case studies from Iran. In: *Essays on gamete and embryo donation in infertility treatment: From medical, theological, legal, ethical, psychological and sociological approaches*. Tehran, Iran: Avesina Research Center and SAMT Publications.

¹⁸⁶ Khamanei, S. A., 2004. *Answers to the reference questions, courtesy of Seyyed Ali Khamanei*, 5th edn. (in Farsi). Tehran, Iran: Hoda International Publications.

¹⁸⁷ Op. cit. Inhorn, 2006c.

Islamic Ethics, Adoption and Assisted Conception

The view that Islam prohibits adoption and gamete donation is stated clearly by Serour:¹⁸⁸

“Islam enjoins the purity of genes and heredity and so to avoid mixing genes is a basic principle. It deems that each child should relate to a known father and mother. Adoption is not allowed, as it implies deceit, hiding from children their true genetic lineage and heredity.”

This view presents two positions: the first is biological, that Islam is concerned with maintaining the ‘purity of genes’; and the second, which is concerned with social and legal arrangements and issues of transparency.

However, there are several problems in maintaining this position. Firstly, it is unclear what is meant by the ‘purity of genes’¹⁸⁹ or why it should imply or necessarily involve deceit about the child produced. The act of adoption or of assisted reproduction with gamete donation is not itself deceptive. There is no reason why it should involve deceit, unless there are specific circumstances where secrecy is necessary to protect the child. A key question then is: who is being deceived and for what purpose? Whilst the child has a right to know about their origins, he or she also has the right to confidentiality and respect for their privacy. Arguably, the child has the right to know about his or her biological origin, for health reasons alone, as there may be a risk of a hereditary condition. It is also the case that adopted children may wish to know their biological parentage as part of their concept of who they are.

It is a moot point whether the couple have a right to confidentiality in relation to the adoption or the way in which their offspring has been conceived. In relation to the latter, the answer must surely be that they do have such a right in relation to their medical history or condition. The argument here is not that this is unimportant in

¹⁸⁸ Serour, G. I., *Bioethics in Infertility Management in the Muslim World*. <http://www.obgyn.net/women/women.asp?page=/eago/art12> (Accessed 8th August, 2009).

¹⁸⁹ Genetic material gets mixed in a variety of ways. Focusing on the ‘purity’ of genes would lead to the conclusion that gene mutations, even where associated with a profound handicap or disorders, should be preserved from one generation to another. It is unlikely that this gene-centred view of heredity was intended in the Qur’anic verses.

relation to their feelings about themselves and their identity, but that it is one factor amongst many contributing to the balance of benefit and harm arising from adoption or assisted conception.

As we shall see, the Qur'an does not prohibit adoption; rather, it counsels against deceit in the act of adoption. Nor is adoption without precedent in Muslim society. In discussing the situation in the USA, Imad-ad-Dean Ahmad gives the example of Algerian family law which defines the concept thus: "Kafala,¹⁹⁰ or legal fostering, is the promise to undertake without payment the upkeep, education and protection of a minor, in the same way as a father would do for his son."¹⁹¹ It also begs the question that if 'legal fostering' in Islam requires fulfilling these parental duties "in the same way as a father would do for his son, then how does it differ from legal adoption as understood in the United States?"¹⁹²

The advantages of adoption are clear; many adopted children would otherwise be orphans, whilst they may also bring fulfilment to a childless couple or to a family. Similarly, for a child produced through sperm or egg donation, it is arguably better that they are born rather than not. If these children are wanted and bring happiness and fulfilment to their parents, then they are likely to be loved and cared for. Although these arguments have been well rehearsed in the ethical discourse on this subject,¹⁹³ they are still significant here because of the argument from a higher purpose in Islamic ethics. In relation to the problem of 'deceit' raised by Serour, then at an appropriate age a child can be told that he or she is adopted or has been conceived through donated sperm or egg. It becomes a problem for the offspring only if society and its morals make it so.¹⁹⁴ The right of adopted children and those produced through gamete donation to know their biological parentage is now

¹⁹⁰ The Islamic form of 'adoption' is called *kafala*.

¹⁹¹ Imad-ad-Dean, A., 1999. The Islamic View of Adoption and Caring For Homeless Children. [online] Available at: <http://www.islamfor today.com/adoption.htm>.

¹⁹² Ibid.

¹⁹³ Vayena, E., Rowe, P. J. and Griffin, P. D., 2002. *Current Practices and Controversies in Assisted Reproduction, Report of a meeting on "Medical, Ethical and Social Aspects of Assisted Reproduction"*. WHO Headquarters in Geneva, Switzerland.

¹⁹⁴ It is interesting to note that the custom of adoption is prevalent amongst many classes of Muslims in India, such as in the Punjab, Sindh, Ajmer, Kashmir, Bombay, Madhya Pradesh and Rajasthan etc.

generally recognised.¹⁹⁵ A recent change in UK law makes it possible for adopted children to trace their biological parents, and anonymous sperm donation is no longer allowed in IVF practice.^{196, 197} This change in the law was made following the recognition of the right of the offspring to have knowledge of their biological origins. Furthermore, this approach is compatible with the teachings of the Qur'an, when of adopted sons it commands: "Call them by [the names] of their fathers as this is more just, but if you know not their father's [names, call them] your brothers in faith, or your Mawlas."^{198, 199} (33.5) This clearly does not prohibit adoption; rather, it prohibits deception. It advises that the child should not carry the family name of those adopting. The *Surah* also states that there would be forgiveness if this instruction was not followed, demonstrating a clear understanding of the needs and circumstances of those who are adopting children.

It is the contention of this thesis that the rights of Islamic adopted children, and similarly those conceived through assisted conception, are a matter of Shari'ah law and not religious principle. Approaches to such practices reflect social and cultural arrangements, and not the prohibitions given in the Qur'an or Hadith as interpreted in the past. As such, these are issues of choice in the realm of the permissible. Whilst lineage and heredity is of central importance for Muslim communities,²⁰⁰ arguably this is more to create family and social cohesion than because of a clearly defined imperative for 'genetic purity'. Indeed, genetics is not referred to in the Qur'an, yet it

¹⁹⁵ Op. cit. Vayena *et al.*, 2002.

¹⁹⁶ The UK government ratified the UN Convention on the Rights of the Child in 1991, bringing the UK law into line with this convention. All adopted children in the UK have the right to see their birth certificate when they are 18 years old.

¹⁹⁷ In the UK, the law was changed in 2005 so that new sperm donors could no longer be anonymous. Under this law, a child of donor assisted-conception can ask when they are 18 to be given the details of their biological parent, possibly allowing them to make contact with the donor. This controversial change was widely debated, but the change was based on the consideration that the right of the offspring to have information of significance to their health and well-being outweighed the rights to confidentiality and anonymity of the donor. Currently, parents are not obliged to put the biological parents' names on the birth certificate, but some argue that this should be done.

¹⁹⁸ *Mawlas* literally means brothers.

¹⁹⁹ Although the translation of *Mawla* is unclear with a variety of different meanings, this can be translated as 'beloved one' or 'friend' and this makes more sense in this context – a child being adopted should be loved.

²⁰⁰ Serour, G. I., Aboulghar, M. A. and Mansour, R. T., 1995. Bioethics in medically assisted conception in the Muslim world. *Journal of Assisted Reproduction and Genetics*, 12: 559-565.

is often stated by Islamic religious scholars that “adoption as such does not exist; it was rejected by the Qur’an”.²⁰¹

However, whilst it is clear that adoption may create problems, prohibition may not be the correct interpretation. Islam teaches that compassion²⁰² and justice²⁰³ are significant factors of Islamic ethics and law. The Qur’an does not specifically prohibit adoption, nor did the Prophet Mohammad prohibit adoption in absolute terms.²⁰⁴ The Qur’an exhorts that Allah has ‘not made your adopted sons your sons’ (33.4) and the next *surah* reveals that Allah is ‘Oft-forgiving, Most Merciful’ and that what counts is ‘the intention of your hearts’ and further that ‘there is no blame on you if you make a mistake in it’ (33.5). Justice is also evident when the Qur’an reveals that, whilst in the decree of Allah ‘blood-relations among each other have closer personal ties’, it also exhorts to ‘nevertheless do what is just to your closest friends’ (33.6).

Lineage and Genetics

It will also be argued in this thesis that the concept of ‘genetic purity’ in relation to heredity places undue significance on one piece of biological machinery, genes, rather than on the social and historical concept of family and identity. A sense of

²⁰¹ Schacht, J., 1982. *An Introduction to Islamic Law*. Oxford: Clarendon Press. p.166.

²⁰² Qur’an 16:47. “... He will not seize them little by little? For your Lord is All-Compassionate, Most Merciful.”

Qur’an 18:81. (He said to Musa) “We wanted their Lord to give them in exchange a purer son than him, one more compassionate.”

Qur’an 22:65. “... Allah is All-Compassionate to mankind, Most Merciful.”

Qur’an 30:21. “... And He placed affection and compassion between you. There are certainly Signs in that for people who reflect.”

Qur’an 19:17. “Then will he be of those who believe, and enjoin patience (constancy and self-restraint), and enjoin deeds of kindness and compassion.”

²⁰³ Brockopp, J. E., 2003. *Islamic Ethics of Life*. Columbia, SC: University of South Carolina Press. pp.12, 102, 116-117.

²⁰⁴ Khan, F. www.twocircles.net/.../adoption_under_muslim_law_dr_md_fayaz_khan.htm (Accessed 11th August, 2009) (article in folder No 2).

identity does not come from knowing the ‘purity’ of genes; rather, it comes from a sense of kinship, and also a sense of belonging and being with others; it is not clear what such ‘purity’ would consist of. The process of sexual reproduction achieves a precise mixing of genes, the avoidance of which Serour regards as a fundamental principle. From an evolutionary perspective, sexual reproduction provides the possibility that beneficial mutations from separate ancestries can be combined, beneficial mutations can be separated from harmful ones, and unsuccessful genetic traits can readily disappear from the population.

Thus, the concept of gene purity is neither a biological nor a religious principle. Raising it to the status of an Islamic principle creates unnecessary problems and hardship. Whilst the Qur’an gives guidance on the relationships between individuals, family and social order, it gives none on genetics. Therefore, the importance of genetics in relation to identity and lineage is a modern concept.

Although the donation and receipt of gametes has become an “integral part of infertility management”,²⁰⁵ the majority of infertile Muslim couples are unable to reconcile the benefits of these techniques with what they consider to be core concepts of their religious belief. Furthermore, Islamic religious resistance towards using these particular methods of reproduction creates caution in the medical profession. Practitioners are deterred from participating or developing health service provisions which utilise policies considered contrary to their own religious beliefs and convictions.²⁰⁶ The received wisdom that these particular techniques are contrary to Islamic law prevents an open discussion of whether this is really so, and whether with appropriate criteria and guidelines, their use in specific circumstances might be permissible in Islam. Arguably, this deterrent effect is denying Muslim couples within the UK the benefit of services that are available to other infertile couples. Because reproduction is considered important in Islam, this inevitably means that these couples suffer because they do not feel able to take advantage of this help.

²⁰⁵ Op. cit. Chliaoutakis *et al.*, 2002.

²⁰⁶ Fasouliotis, S. J. and Schenker, J. G., 2000. Ethics and assisted reproduction. *European Journal of Obstetrics, Gynaecology and Reproductive Biology*, 90: 171-180.

However, this objection rests on the importance of lineage in Muslim identity and the consideration that this is part of the core religious beliefs and not in the realm of the permissible. It is the argument of this thesis that whilst there are problems associated with the use of reproductive technologies and gamete donation, particularly in relation to the identity of the offspring, these are no more or less a problem than in society in general; identity, family, community and a sense of belonging are as much social constructs as they are religious. They become problems only if society and the law make them so. In the context of the law and practice in the UK, they are no longer a problem. The rights of children conceived through assisted conception, whether or not involving donated gametes, are not affected adversely in family law or through social attitudes, and such methods of reproduction have become established and accepted. In the context of the British secular society, this need not present problems for the offspring of Muslim couples, unless the Muslim communities themselves continue to make it a problem through social exclusion, stigma or discrimination. As the Islamic scholar Amina Wadud has argued in relation to the role of women in Islam, the “protection of and care for those procreated are always contextually or culturally motivated”²⁰⁷ and “biological determinism is not the moral basis of Islamic society”.²⁰⁸

That it is the family which is important in Islamic ethics and not the mixing of genes is demonstrated by the fact that Muslim men in some parts of the world are able to take another ‘wife’ for the purposes of reproduction; however, this accepted practice does exactly what Serour regards as a breach of a fundamental principle, that the gene line should remain pure. Such a marriage of convenience for this purpose is simply a technical or social fix. Furthermore, it is a fix that is unavailable to Muslims living in secular states such as the UK, where bigamy is unlawful.

If by ‘genetic purity’ Serour means that the male line should remain clear and intact, then this would be the case with a donated egg if it is fertilised by the husband. This suggests that the fundamental principle, if there is one, should be concerned with family or the fidelity between husband and wife, rather than with biology *per se*. It is

²⁰⁷ Op. cit. Wadud, 2006a. p133.

²⁰⁸ Ibid.

about the relationship between a man and wife, rather than the statement of a biological principle. Meanwhile, a rigid application of this principle of genetic lineage, regardless of circumstances, produces further suffering for infertile couples.

Even supposing that such a principle existed, by making genetics central to Islamic faith, Serour is conflating morality and ethics. Moral principles by their nature are considered universal,²⁰⁹ but the ethical constructs arising from them are contextual and circumstantial. Ethics is the process by which we deal with the exceptions to rules rather than how we stick to them rigidly. Ethics considers how best we should act when principles conflict, or where circumstances make the principle difficult to hold. In this process, either the potential outcomes following a course of action are measured and weighed to determine the most appropriate decision, or the principles are considered in the context in which they are applied and particularly in relation to duties and obligations. Whilst infertility is a problem for a significant proportion of Muslim couples, egg or sperm donation would be the only solution for some but not all of these couples. It would benefit the couple where either the woman is unable to produce eggs or the male partner is unable to produce sperm, which may have occurred as a result of an underlying medical condition. Islam calls upon its followers to understand and overcome diseases and conditions that produce human suffering.²¹⁰ Furthermore, appropriate criteria and guidelines for the use of egg or sperm donation can be established. To apply inappropriately rules of conduct intended to prohibit sexual intercourse outside marriage and breach of the marriage contract, to the use of assisted reproduction to combat disease is not simply unjust but it misrepresents the higher purpose of the rule; to protect the sanctity of the marriage bond and to establish clear and just rules for inheritance. Sexual intercourse is unnecessary for gamete donation in assisted reproduction. These purposes are social rather than biological and are determined by social regulation rather than biological function *per se*.

²⁰⁹ Dawson, A. and Gerrard, E., 2006. In defence of moral imperialism: four equal and universal *prima facie* principles. *Journal of Medical Ethics*, 32(4): 200-204.

²¹⁰ Sahih Al-Bukhari. Book 79, Kitaab al-Tibb, Chapter 1, Hadith 5354. "There is no disease that God has created, except that He also has created its treatment."

The change in the laws governing adoption and assisted reproduction, for example in the UK, demonstrate that the principal objection to these practices, specifically that they involve ‘deception’ in relation to identity and lineage, can be addressed by appropriate regulation and guidelines for their use. Such regulations put first the protection and rights of the offspring in acknowledging the need to know their biological origins for health reasons, for their wellbeing and for their concept of self. They also ensure that the rights of children, whether adopted or created by assisted conception, are protected, and furthermore that these rights are no less than those of other offspring. They also demonstrate: 1) that the problems of identity and lineage are not unique to Islamic belief, and 2) that the legal framework and the mores of the society of which Muslims are a part should be taken into account in the Islamic ethical process. Muslims do not form a homogeneous group; their circumstances and history are different and arguably so too should the ethical solutions to the problems encountered by these disparate communities.

The point here is that ethical constructs are circumstantial and reflect and determine social arrangements at the time they are made. Ethical dilemmas present with different histories and associated factors to consider. They often reflect the circumstances in a particular time and place, or arising from a particular social structure or arrangement. Muslim communities in a secular or pluralistic society such as that in the UK are not immune from society in general; their children are educated in it, they work in it, they get married in it and have children in it, they interact with it and contribute to it, and they contribute to its development over time. Shahid Athar, a Muslim medical practitioner, points to these circumstances for the approximately 8 million Muslims living in the USA. He argues that Muslims living in a secular society “cannot stay aloof from the issues surrounding them. All factors affecting non-Muslims, sooner or later, directly or indirectly, will affect them too.”²¹¹ Shahid Athar also elaborates on the unnecessarily rigid view of Islamic teaching on the use of egg or sperm donation, citing the problem of lineage and third party involvement. In relation to the mother, he cites the Qur’an: “none can be their

²¹¹ Athar, Shahid, ‘Enhancement Technologies and the person – an Islamic View’. *HeinOnline – 36 J.L. Med. and Ethics*, 59. 2008. <http://islam-usa.com/im18.html>. (Accessed 11th February, 2009).

mothers except those who gave them birth” (58:2). This gives rise to a key issue of whether these objections are intractable.

In the case of donated eggs, those ‘who gave birth’ to the resulting offspring would clearly be the wife who received them, as it is she who gives birth. This fulfils the requirement that reproduction should occur within the marriage contract. However, as will be discussed elsewhere in this thesis, this *surah* is not specifically about issues of lineage or reproduction *per se* but is about men at the time of Prophet Mohammad divorcing their wives and using as a reason that they are ‘as their mothers’.²¹² The section of the *surah* reads: “If any men among you divorce their wives by *zihar* [calling them mothers], they cannot be their mothers: none can be their mothers except those who gave birth to them” (58:2). This *surah* relates to a particular social practice at the time of the Prophet. It also provides an example of Islamic ethical techniques.

Reasoning in Islamic ethics is often made through the use of an analogy (*qiyas*); i.e. using a statement in the Qur’an about one action to make a decision about a similar action not referred to explicitly. This interpretation of *surah* 58.2 is no exception; inevitably so, because IVF and gamete donation would not have been addressed in seventh century Arabia. The question arises therefore, whether this analogy is reasonable. From the point of view of the argument presented in this chapter, we can note two things: 1) that such interpretations are often contingent, and 2) care must be taken in turning them into timeless principles applicable in all circumstances. As circumstances change, new guidance and reason is necessary. As the Islamic scholar Tariq Ramadan puts it:

“Faithfulness to principles cannot involve faithfulness to the historical model because times change, societies and political and economic systems become more complex, and in every age it is in fact necessary to think of a model appropriate to each social and cultural reality.”²¹³

²¹² Marriage with their mothers would be prohibited.

²¹³ Ramadan, T., 2004. *Western Muslims and the Future of Islam*. Oxford: Oxford University Press. Ch. 2, p.36.

A good example of developing new models in the light of changing circumstances and in the light of assisted reproduction is presented by the *fatwa* from the religious leader in Iran allowing oocyte donation in certain circumstances. On the issue of lineage and rights of inheritance, the *fatwa* states that the baby born will follow the name of the infertile father rather than the sperm donor, but, as with egg donation, the donor child can only inherit from his biological father, the sperm donor. In this way, the infertile father is considered as in adoption, preserving the rights of the offspring. Nevertheless, whilst some Shi'ite clerics accept this position, many continue to prohibit the use of gamete donation.²¹⁴

Thus, interpretations of Qur'anic verses and Hadith are not timeless or without context. They are a 'window of opportunity'²¹⁵ that must be applied through reasoning to address the problems and contextual needs of the Muslims involved. An example of this is the issues concerning paternity. At the time of Prophet Mohammad, no means were available to determine with certainty the paternity of a child. This can now be achieved through DNA testing. The historian Robertson Smith informs us that lineage in pre-Islamic Arabia was maintained through the female line. The father was referred to as the 'one who acted as guardian and provided nourishment'.²¹⁶ The consideration 'was not primarily a matter of blood' in terms of relationship to the father; thus, adopted children and blood children were considered the same. This was necessary because there could be no certainty about the biological father.

Family Structure and Social Changes

²¹⁴ Khamanei, S. A., 2004. Answers to the reference questions, courtesy of Seyyed Ali Khamanei, 5th edn. (in Farsi). Tehran, Iran: Hoda International Publications; Inhorn, M. C., 2003a. *Local Babies, Global Science: Gender, Religion and In Vitro Fertilisation in Egypt*. New York: Routledge. pp 414-425.

²¹⁵ Inhorn, M. C., 2006a. Arab Americans, African Americans, and infertility: barriers to reproduction and medical care. *Fertility and Sterility*, 85 (4): 844-852.

²¹⁶ Robertson, S. W., 1907. *Kinship and Marriage in Early Arabia*. London: Adam and Charles Black.

In modern times, the family structure has undergone radical changes in response to rapid economic and social development, and migration. Modernity, as Anthony Giddens puts it, ‘breaks down the protective framework of the small community and of tradition’²¹⁷ and argues that what makes a given response ‘appropriate’ or ‘acceptable’ ‘necessitates a shared – but unproven and unprovable – framework of reality’.²¹⁸ Amina Wadud²¹⁹ reminds us that the Muslim family structure is not unaffected by this. As she puts it, lip service is still given to the ‘extended family’, but mass urbanisation and migration have produced ‘a new culture of nuclear families’ with different configurations and relationships to the ‘extended family’. This change is not without impact for infertile Muslim couples and the problems and decisions they face, and this should be a key contextual factor in Islamic ethics.

For Muslims, Islamic ethics provides the ‘shared framework of reality’²²⁰ referred to by Giddens, but problems arise if the framework is inappropriate for the problems faced by those who share the framework. Muslims such as those in the UK, existing as minority groups in a broader secular society, can find strength in their religious identity and beliefs. However, in the face of influences from the broader community they may become less pragmatic in the application of what they consider to be fundamental Islamic principles. The search for a clear identity produces an inward reflection of what it is to be Muslim, and as a result it may place significance on certain practices, traditions, customs or beliefs. This is given support by some religious leaders who regard secular society as a threat because it “constitutes open rebellion against Allah”.²²¹ This view holds secular society to be ‘without belief’, rather than one that can accommodate and sustain a variety of beliefs. However, Muslims cannot insulate themselves entirely from modern-day problems or the impact of the society in which they live. Thus Muslims living in European secular states, when considering their own religious beliefs and convictions, find that issues

²¹⁷ Giddens, A., 1991. *Modernity and Self-Identity. Self and Society in the Late Modern Age*. Polity Press. Ch. 1, p.33.

²¹⁸ Ibid, p.36.

²¹⁹ Op. cit. Wadud, 2006a.

²²⁰ Op. cit. Giddens, 1991.

²²¹ Shakir, Z. *The Changing Face of Secularism and the Islamic Response*. Available at: <http://www.masud.co.uk/ISLAM/misc/sec.htm> 15th August 2009.

arise relating to “plural identities and their compatibility with modern day Europe and Islam, with such issues finding variable expressions in member-states”.²²²

Arguably, the application of rulings made in the context of Islamic states and in countries where Muslims are in the majority, should not be applied to Muslims in Western secular states without modification and without taking account of their circumstances and needs. A distinction should be made between core religious principles that define Muslim identity and the “cultural trappings” these principles may be given in specific societies. As Ramadan argues, it must not happen that any one culture is so identified with Muslim principles that this prevents permissible adaptation in another context, or that it “accords itself a false right to represent the only way of being authentically Muslim”.²²³ For Muslims there can be no faith without understanding. In the words of the Prophet, “Seeking knowledge is an obligation on every Muslim man or woman”.²²⁴ Thus, for Muslims, faith involves knowledge of the Qur’an and Sunna, but also an understanding of the context in which they live. To talk of a Muslim World is a misconception; the world is one, and many people of different beliefs live within it.

The point here is that whilst the fundamental values of Islam remain unchanged, Islamic ethics are reflective, contextual and responsive to the specific problems faced by communities of people. The ethic is not decided first in an idealistic way and then the people moulded to it; on the contrary, the ethic is moulded to the real needs and the reality of people’s lives. Thus, the view of Islamic religious scholars on the use of ART has undergone radical changes since the first baby was born using IVF in 1978. At the advent of IVF procedures, the use of modern reproductive technology was considered to be highly objectionable in Muslim societies, especially in the Middle East.^{225, 226, 227, 228} The main reasons for such objection were two-fold: 1) that

²²² Hellyer, H. A., 2007. British Muslims: Past, Present and Future. *The Muslim World*, 97 (2): 225-258.

²²³ Ramadan, T., 2004. Ch.3, p.78.

²²⁴ Hadith reported by Al-Bukhari.

²²⁵ Op. cit. Gad El Hak, 1980.

²²⁶ Gregorios, Archbishop, 1989. General for high coptic studies, culture and scientific research. Christianity views on IVF and ET in “Treatment of infertility” and test tube babies. In: R. Kamal, ed., *Akhbar El Youm*, 82:131.

a third party was involved in conception, and 2) that it interfered with the will of God. However, with the *fatwas* from Al-Azhar in 1980,²²⁹ the Islamic Fiqh Council in Mecca in 1984,²³⁰ and the Church of Alexandria in 1989,²³¹ the procedures became widely acceptable to the Muslim medical profession as well as to Muslim patients, Islamic religious scholars and policy-makers in most countries of the Middle East. These bodies and organisations issued guidelines which were adopted by the National Medical Councils and Ministries of Health of these countries and regulated the practices of ART centres.²³² In the late 1990s, the religious leader in Iran, Ayatollah Ali Hussein Khamanei, issued a *fatwa* that oocyte donation is not itself prohibited and this was sanctioned by the Iranian parliament in 2003, paving the way for third-party conception in an Islamic country.²³³ These changes of *fiqh* demonstrate how Islamic ethics can respond to new knowledge and understanding, with interpretations that are both consistent with core principles but responsive to needs and circumstances.

Islam regards procreation as a sign of God's will: 'And we cause who we will to rest in the wombs' (22.5). Furthermore, infertility has a particular significance in Islamic cultures such that it may produce a sense of stigma and shame in those affected by it, and Muslims may find infertility a difficult subject to talk about freely. Not surprisingly then, in the Muslim countries of the Middle East, such as Egypt, Syria, Lebanon²³⁴ and Saudi Arabia, infertility treatment began with extreme secrecy. It was considered to be a shameful act filled with doubt and feelings of guilt. Such

²²⁷ Jones, H. and Cohen, J., 2001. IFFS Surveillance. *Fertility and Sterility*, 76: 1-35.

²²⁸ Proceedings of the 7th Meeting of the Islamic Fikh Council on IVF and ET and AIH. Mecca, Kuwait, *Siasa Daily Newspaper*, March, 1984.

²²⁹ Op. cit. Gad El Hak, 1980.

²³⁰ Op. cit. Proceedings of the 7th Meeting of the Islamic Fikh Council in IVF and ET and AIH.

²³¹ Op. cit. Gregorios, 1989.

²³² Op. cit. Serour, 2002.

²³³ Zahedi, F. and Larijani, B. Considerations of third-party reproduction in Iran. *Human Reproduction*, 22 (3): 902.

²³⁴ Op. cit. Clarke, 2011. Clarke states: "But Lebanon, unlike Syria at that time, had a very vibrant and advanced fertility treatment sector, and free access to a wide variety of religious opinion, Muslim and Christian."

feelings diminished during the nineties and infertility treatment was conducted in a more candid manner without assigning stigma or shame.²³⁵

Serour, when talking about surrogacy, notes that:

“While the Islamic Fikh Council of Mecca and the Church of Alexandria previously allowed surrogacy to be performed on the second wife of the same husband or a friend of the family, respectively, both councils soon after denied surrogacy and their guidelines became identical with those of Al-Azhar. The promulgation of these guidelines was just a response to the needs of the community, and the discussions and debates which arose in the area, as well as the problems anticipated with the practice of surrogacy with special reference to the cultural and religious background of the people in the area.”²³⁶

The key point here is that the changes were, as Serour puts it, ‘a response to the needs of the community’;²³⁷ they were contextual and contingent on the ‘discussions and debates which arose in the area’.²³⁸ This demonstrates another aspect of Islam which is that “in order to remain faithful [Islam] must be creative in the matter of relations with the societies and cultures within which and upon which it is working”.²³⁹ Furthermore, it is not in the nature of Islam that it should create unnecessary hardship; “Allah desireth for you ease; He desireth not hardship for you.”²⁴⁰ The influence of local custom (*al-urf*) is an essential ingredient of Islamic ethics and often leads to differences in *fiqh*. The principles remain the same, but the application ‘takes on the colour’ of the culture in which it is being applied.²⁴¹ If this is true for Muslims in the Arab world, then it must also be so for Muslims living in the context of a modern Western society. This brings us to a crucial point; problems

²³⁵ Serour, G. I., 1991. Infertility: a health problem in the Muslim world. *Population Sciences*, 10: 41-58.

²³⁶ Op. cit. Serour, 2002. p.42.

²³⁷ Ibid.

²³⁸ Ibid.

²³⁹ Op. cit. Ramadan, 2004. Ch. 1, p.36.

²⁴⁰ Qur’an 2:185.

²⁴¹ Ibid.

are not dealt with simply by applying solutions applicable in the Arab world to the problems of those living in the West.

Since the time when the World Health Organisation called an expert scientific group meeting on ART for evaluation of the whole issue,²⁴² ART has been considered to be an effective management of infertility,^{243,244} creating a positive effect on the attitudes of patients towards ART.

The argument presented in this thesis addresses the interpretations or understandings of Islamic religious scholars within the various sects of Islam. Whilst there are divergences of opinion, nonetheless the 'central core of beliefs' remain steadfast.²⁴⁵ Divergences of opinion often reflect differing social contexts, but there is a real problem when the social context is undergoing rapid and radical change, as then it is difficult for a considered ethical opinion to keep pace with these rapid changes, particularly when they have occurred in European secular states. Not only are the developments in science and technology occurring rapidly, but equally there have been major changes in public attitudes and in the social and economic structure of these secular societies. Developments in reproductive science and medicine have been particularly fast, and religious leaders have found it difficult to make adjustments to them. This is not a problem unique to Islam; developments in reproductive science and in medicine have brought new challenges to the legal and ethical framework of secular society itself. Changes in the law and to regulations have been made from time to time to adjust to these developments, particularly to protect the rights and interest of those involved, whether surrogate mothers, gamete donors and recipients, and not least the offspring. Yet, from a religious perspective, changes in attitudes to reproduction, marriage and family tend to be seen as a sinister product of secularism, against which it is thought a line has to be drawn. Sex, sexuality and reproduction have become a battleground for religious

²⁴² *Report of a WHO Scientific Group. Recent advances in medically assisted conception.* Geneva, World Health Organisation, 1992. WHO Technical Report Series No. 820.

²⁴³ Serour, G. I., Aboulghar, M., Mansour, R., Sattar, M. A., Amin, Y. and Aboulghar, H., 1998. Complications of medically assisted conception in 3,500 cycles. *Fertility and Sterility*, 70: 638-642.

²⁴⁴ Serour, G. I., 1999. Complications of assisted reproductive techniques: a review. *Assisted Reproduction*, 9: 214-232.

²⁴⁵ Enayat, H., 1982. *Modern Islamic Political Thought.* Austin: University of Texas Press. pp.1-4.

fundamentalism, against what is often depicted as modern depravity, a breaking of the moral compass. As Marty notes:

“Individuals, cultures, nations, and societies, in certain contexts, dimensions, and perspectives, are really secular, in any plausible definition of the term. At the same time they are, in another dimension and from another perspective, really religious, in almost unguarded ways. ... Secularisation is a real phenomenon. That is why fundamentalists rise in rebellion against it – and simultaneously appropriate many of its features, beginning with the mass media and modern technology. But the resurgence of popular interest worldwide in religiosity and spirituality is a real phenomenon, too.”²⁴⁶

²⁴⁶ Op. cit. Marty, 2003.

Chapter Two

Human Reproduction, Assisted Reproduction and Infertility

The significance of the genetic connection between parent and child undoubtedly is part of what makes infertility²⁴⁷ a painful experience. While adoption may satisfy one's desire to provide nurture for a child, it cannot satisfy the yearning to create the child and to watch as a version of oneself unfolds and develops.²⁴⁸

This chapter basically explains, compares and argues the appraisal and understanding of human reproduction in relation to earlier historical interpretations of the Islamic ethical culture system on infertility. It then enlarges upon modern assisted reproductive procedures designed to cure infertility. It further looks at the role of parenthood in relation to children, and why in Islam biological sphere parents still hold providence over their children.²⁴⁹ Similarly, the relief from infertility should not extend any right to parents either to claim the 'ownership' of a child or the right to indulge in child abuse or child labour,²⁵⁰ as was prevalent in early Islam.

Overall, this chapter makes a brief reference to the concept of lineage, which was an old Arab tribal custom rather than a strictly defined divine imposition, as interpreted by various Islamic schools of thought. As explained briefly in the previous chapter, the contention of this thesis is that the issues concerning lineage should restrain from seeking a mainly social solution than the theological limitations imposed upon it.

²⁴⁷ Different modalities for the treatment of infertility have been practised over hundreds of years and became the subject of ethical concern. Medical therapy, hormonal therapy, corrective and reconstructive surgery for females or males, are examples.

²⁴⁸ Hill, J. L., 1991. What does it mean to be a "Parent?" The Claims of Biology as the Basis for Parental Rights. *New York University Law Review*, 66 (2): 353-420.

²⁴⁹ Donner, W. W., 1999. Sharing and compassion: fosterage in a Polynesian Society. *Journal of Comparative Family Studies*, 30: 703-722; Kabir, M., Banu az-Zubair, M. K., 2007. Who is a parent? Parenthood in Islamic Ethics. *Journal of Medical Ethics*, 33: 605-609.

²⁵⁰ Woodhouse, B. B., 1992. Who owns the Child? Meyer and Pierce and the Child as Property, *William & Mary Law Review*, 33 (4): 995-1122.

So far, Islamic religious scholars have seldom discussed the topics of human reproduction outside the established interpretations of Islamic Shari'ah law. Although not in disagreement with the principles of modern reproductive technologies developed under the influence of secularism, they nevertheless find these intrusive, restrictive and indeed difficult to reconcile with the established principles of Islamic cultural systems with regard to lineage and rules set for alleviating infertility.²⁵¹ To distinguish the areas of ART which either give rise to uncertainty or create an atmosphere of confusion is an additional aim of this chapter.

At various Islamic conferences,²⁵² discussions on human reproduction technologies have consistently revolved around the introduction of 'the strange sperm and ovum' introduced 'in the family', which not only blur the line of descent, but also disrupt the 'purity' of lineage through the 'known father'. However, modern human reproductive technologies are nevertheless recognised as useful procedures for alleviating the infertility of infertile Muslim couples, through the rightful means prescribed by Shari'ah law, i.e. the sperm and ovum must be from the husband and wife.²⁵³ They rest their arguments that parenthood, according to the Qur'an, is an attribute²⁵⁴ as well as inherent quality,²⁵⁵ and it qualifies²⁵⁶ for creating interdependent duties and rights of the parent-child as an invaluable quality.²⁵⁷ The Qur'an clearly ordains who can be considered as a parent of a child.^{258, 259} There is,

²⁵¹ Adeeb, K., 1999. *The Politics of Muslim Cultural Reform*. Berkeley, Los Angeles: University of California Press. p.122.

²⁵² Op. cit. Serour, 1992; op. cit. Serour, 1997a; op. cit. Serour, 2002, pp.41-49.

²⁵³ Op. cit. Serour, 2005.

²⁵⁴ Qur'an 31:14: "And We have enjoined upon man concerning his parents – His mother beareth him in weakness upon weakness, and his weaning is in two years – Give thanks unto Me and unto the parents. Unto Me is the journeying"; Qur'an 2:233: "Mothers shall suckle their children for two whole years; (that is) for those who wish to complete the suckling".

²⁵⁵ Qur'an 46:15. "His mother beareth him with reluctance, and bringeth him forth with reluctance, and the bearing of him and the weaning of him in thirty months."

²⁵⁶ Qur'an 4:23 pertains to those to whom marriage is prohibited.

²⁵⁷ Cherlin, A. J., 1999. Going to extreme: family structure, children's well-being, and social science. *Demography*, 36: 421-428.

²⁵⁸ Qur'an 31:14: "And We have enjoined upon man concerning his parents – His mother beareth him in weakness upon weakness, and his weaning is in two years – Give thanks unto Me and unto the parents. Unto Me is the journeying". Qur'an 2:233: "Mothers shall suckle their children for two whole years; [that is] for those who wish to complete the suckling".

however, a sensitive awareness amongst Islamic religious scholars that ART seriously undermines the Muslim perception of parenthood of the child.²⁶⁰ Contrary to Islamic scholars' contentions, where the identity of parents is essential, according to Banu az-Zubair:²⁶¹

“the scientific advances have abstracted the genetic and gestational components in childbearing, and added unprecedented complications to what was previously obvious. The attendant complications are beginning to render the question ‘who is the parent?’ almost meaningless.²⁶² In a secular society, sooner than later it may become a wrong question to ask, especially when in society, lesbian couples are ‘ethically and legally considered the parents of the child’.”²⁶³

Human Reproduction

Through successful discovery of modern innovative procedures, human reproduction is becoming extremely fascinating, interesting and a provoking subject with regard to infertile Muslim couples living in secular societies. Within its relatively short existence, it is becoming evident how Islam and even the other two major religions, i.e. Christianity and Judaism, are being pushed into the margins in so far as the successes of modern human reproduction are concerned.

It is of interest to note that Islam was the first divine religion to express human reproduction through its Qur’anic Ayats.²⁶⁴ The Qur’an²⁶⁵ was revealed to Prophet

²⁵⁹ Qur’an 46:15: “His mother beareth him with reluctance, and bringeth him forth with reluctance, and the bearing of him and the wearing of him in thirty months”.

²⁶⁰ Brewaeys, A., 2001. Review: parent-child relationships and child development in donor insemination families. *Human Reproduction Update*, 7: 38-46.

²⁶¹ Az-Zubair, B., 2007. Who is a parent? Parenthood in Islamic ethics. *Journal of Medical Ethics*, 33: 605-609.

²⁶² Fuscaldo, G., 2003. What makes a parent? It’s not black or white. *Journal of Medical Ethics*, 29: 66-67.

²⁶³ Op. cit. Az-Zubair, 2007.

²⁶⁴ The Qur’an was revealed to Prophet Muhammad in 610 AD and for a further 23 years of his Prophethood. Besides revealing religious messages and guidance, it also reveals messages of ethical,

Muhammad some 1400 years ago, and the divine revelations²⁶⁶ of the various stages of scientific human production were never revealed to any other Prophet. There are at least a few dozen salient references to human reproduction within the Qur'an, revealing the broad discipline of the subject.²⁶⁷ For example, in chapter *al-Insaan*, the Qur'an reveals that:

- “Verily, I created humankind from a small quantity of mingled fluids.”²⁶⁸
- “Was he not a drop of fluid which gushed forth? Then he became a clot; then [Allah] shaped and fashioned. And made of him a pair, the male and female.”²⁶⁹
- “Then He made his seed from a draught of despised fluid.”²⁷⁰
- “He graciously maintains that HE is able to do all things.”²⁷¹ In addition, “Now let man but think from what he is created”.²⁷² He further directs, “Travel through the Earth and see how God did originate creation.”²⁷³
“Thereafter We made him [the offspring of Adam] as a Nutfah [mixed drops of the male and female sexual discharge and lodged it] in a safe lodging [womb of the woman]. Then We made the Nutfah into a clot [Alaqa, a piece

social, political and moral practices. The Qur'an was committed to writing by Caliph Usman. It contains 114 structures, each of which is called a surah section.

²⁶⁵ The Qur'an is a fixed text, but not a book of law. It consists of a few hundred verses with clear directives to believers on ethical, moral, social rituals. Its composition is entirely different to that of the Hebrew or Christian scriptures.

²⁶⁶ However, it must be maintained that Muslims do not believe that Prophet Muhammad was divine. There is a distinct demarcation between the divine words of God and what Prophet Muhammad said to his community, known as sunnah. Sunnah describes in general terms what the Prophet Muhammad did. Unlike the Qur'an, which is a primary source of God's word to his Prophet, sunnah are the words and deeds of the Prophet Muhammad which are found in many different sources and are carefully preserved and passed on from generation to generation in the precise form of oral transmission known as hadith.

²⁶⁷ www.al-islam.org/about/contributions/humanreproduction.html (Accessed 21st May, 2008).

²⁶⁸ Qur'an 76:2. “*Innaa Khalaqnal-insaana min-nutfatin amshaajin nabtalihi faja-alnaaha samii-am basiiraa.*” The Arabic word *nutfah* has been translated as a ‘small quantity of [sperm].’ It comes from the verb meaning ‘to dribble, to tickle’ and is used to describe what remains in the bottom of a bucket which has been emptied. Again, the Arabic word ‘*amshaaj*’ has been understood by early commentators to refer to the mixture of male and female discharges. It has thus been explained as sperm made up of various components.

²⁶⁹ Qur'an 75:37-39. Here the Arabic word *mani* signifies sperm.

²⁷⁰ Qur'an 32:8.

²⁷¹ Qur'an 2:148. “Lo! Allah is Able to do all things.”

²⁷² Qur'an 56:5.

²⁷³ Qur'an 29:20.

of thick coagulated blood], then We made the clot into a little lump of flesh [Mudghah], then We made out of that little lump of flesh bones, then We clothed the bones with flesh, and then We brought it forth as another creation. So blessed be Allah, the Best of Creators!”²⁷⁴

- “And He it is Who hath created man from water, and hath appointed for him kindred by blood and kindred by marriage; for thy Lord is ever Powerful.”²⁷⁵

The Qur’an has undoubtedly revealed the development of human reproduction in a consistent and succinct manner, i.e. how the fertilisation of the egg is safely implanted in the womb of a woman where it is gestated for nine months. Within the detailed framework of Qur’anic reasoning,²⁷⁶ beliefs, and its allegorical philosophy, the earlier Islamic religious scholars could not foresee the advancement of knowledge developing through the science of modern reproduction and this has only become possible within the last few decades. The reasoning and arguments of Islamic religious scholars as presented in the Arabian Peninsula, ‘the cradle of human culture’,²⁷⁷ were totally unaware and completely independent of modern developments.

It is reported that: “In the early 1980s, Prof. Keith Moore, formerly an anatomist at the University of Toronto, Canada, produced a special edition of his embryology textbook, the standard version of which has been widely used in medical schools around the world.”²⁷⁸ Apparently, when he first read what the Qur’an has to say about the development of the human embryo, he was “astonished by the accuracy of

²⁷⁴ Qur’an 23:13-14.

²⁷⁵ Qur’an 25:54.

²⁷⁶ Ahmad, A., 1986. *Toward Islamic Anthropology*. Herndon, VA: International Institute of Islamic Thought; Hodgson, M. G. S., 1974. *The Venture of Islam*. Chicago: University of Chicago Press. The Muslim ideal is a return to the pristine pattern of society and model of behaviour as conveyed by God through Prophet Muhammad and as inscribed in the Qur’an and Hadith.

²⁷⁷ The Arabian Peninsula was surrounded by water without any trade-worthy harbours. The history of Arabian nations depicts an expanse of sandy desert, not precipitating and supporting agriculture, yet the Arabian Peninsula is nestled in water rather than lacking water. The Arabian Peninsula also had four rich and influential city-states with heavy rainfall: Saba, Hadramawt, Qataban and Ma’in.

²⁷⁸ www.answering-islam.org/Quran/Science/embryo.html.

the statements that were recorded in the 7th century AD, long before the science of embryology was established.”²⁷⁹ He further stated that:

“Much has subsequently been written by Muslims in an attempt to demonstrate that the Qur’an, which is claimed to be God’s ultimate revelation, contains statements about how humans develop inside the womb, which could not possibly have been known at the time it was revealed to Prophet Mohammad.”²⁸⁰

Moore supports his argument by noting that:

“There are at least 60^[281] verses which deal explicitly with human reproduction and development, but these are scattered throughout the Qur’an and many of

²⁷⁹ Moore, K. L., 1982. *The Developing Human: Clinically Oriented Embryology*, 3rd edn. with Islamic additions. Philadelphia: Saunders.

²⁸⁰ Ibid.

²⁸¹ Could it be from earth?

11:61 It is He Who hath produced you from the earth, Or dry clay (Arabic Salsaal)?
15:26,28,33 We created man from sounding clay
17:61 Thou didst create from clay
32:7 He began the creation of man from clay. Did we come from nothing?
19:67 We created him before out of nothing. No, we did not!
52:35 Were they created of nothing?
23:12 We created man from a product of wet earth (loam) (Pickthall)
23:12 Man we did create from a quintessence (of clay)
38:71 I am about to create a mortal out of mire. Or water?
25:54 It is He Who has created man from water (see also 21:30, 24:45)

Could it be dust?

3:59 He created (Jesus) out of dust
30:20 He created you from dust
35:11 Allah did create you from dust ...

Perhaps we arose from the dead or from one person?

30:19 It is He who brings out the living from the dead
39:6 He created you from a single Person (see also 4:1)

The drop of fluid or semen

In a number of places we are informed that man is created from a drop of fluid (semen, seed or sperm)

16:4 He created man from a drop of fluid (Pickthall)
16:4 He has created man from a sperm-drop
32:8 He made his seed from a quintessence of despised fluid
35:11 ... then from a little fluid (Pickthall)
53:46 (he created) from a drop of seed when it is poured forth (Pickthall)
56:46 From a Sperm-drop when lodged (in its place)
56:58 Have ye seen that which ye emit (Pickthall)
56:58 Do you then see? The (human Seed) that ye emit
75:37 Was he not a drop of fluid which gushed forth? (Pickthall)
75:37 Was he not a drop of sperm emitted (in lowly form)?
76:2 We create man from a drop of thickened fluid (Pickthall)
76:2 We created Man from a drop of mingled sperm

the themes are repeated over and over again, as is common to much of the book. A useful place to begin would be the material out of which we are created. One would expect the Qur'an to be unambiguous about such an elementary matter, but the verses listed below show just how much certainty there appears to be in our origins.”²⁸²

The Qur'an reveals:

- “O mankind! If ye are in doubt concerning the Resurrection, then lo! We have created you from dust, then from a drop of sperm, then from a clot, then from a little lump of flesh shapely and shapeless, that We may make [it] clear for you. And We cause what We will to remain in the wombs for an appointed time, afterwards We bring you forth as infants, then that ye attain your full strength.”²⁸³
- “Has not man seen that We have created him from a sperm? ...”²⁸⁴
- “Thinketh man that he is to be left aimless? Was he not a drop of fluid which gushed forth? Then he became a clot; then [Allah] shaped and fashioned And made of him a pair, the male and female.”²⁸⁵
- “He created you from one being, then from that [being] He made its mate; and He hath provided for you of cattle eight kinds. He created you in the wombs of your mothers, creation after creation, in a threefold gloom. Such is Allah, your Lord. His is the Sovereignty. There is no God save Him. How then are ye turned away.”²⁸⁶
- “Lo! We create man from a drop of thickened fluid to test him; so We make him hearing, knowing.”²⁸⁷

80:19 From a sperm-drop He hath created him

86:6-7 He is created from a drop emitted-proceeding from between the backbone and the ribs.

²⁸² Raeid, Jewad. www.answering-islam.org/Quran/Science/embryo.html (Accessed 26th December, 2010).

²⁸³ Qur'an 22:5.

²⁸⁴ Qur'an 36:77.

²⁸⁵ Qur'an 75:36-39.

²⁸⁶ Qur'an 39:6.

²⁸⁷ Qur'an 76:2, the thickening of the fluid is formed by the functioning of the testicles, the seminal vesicles, the prostate glands and the glands annexed to the urinary tract.

- “Then we developed the drop into a hanging [embryo], then developed the hanging [embryo] into a bite-size [foetus], then created the bite-size [foetus] into bones, then covered the bones with flesh. We thus produce [Anshaa] a new creature. Most blessed is God, the best Creator.”²⁸⁸

Serour creates a distinction by stating that the “reproductive choice is the right of the person to choose freely his or her reproductive performance, including his or her reproductive potentials.”²⁸⁹ Muslim couples’ infertility eventually casts its influence across the entire family, their relatives and the community as a whole. It is necessary for the infertile couple to abide by the laid down Shari’ah law and their option for choice can only be of a subservient nature needing the approval of the Islamic society. The question then is, if they should decide to have a baby by deviating from the existing Shari’ah law, will it categorise them as irreligious? Serour implied that he concurs with the contention of this thesis, that it does not. He then enlarges the argument by stating that:

“It is a well-known fact for physicians working in the field of medically assisted conception that a few Muslims fly over to Europe or to the United States to fulfil a reproductive choice which they cannot have in their own country. The same pattern also exists in Europe among residents of different European countries with different regulatory mechanisms for the process of reproduction.”²⁹⁰

²⁸⁸ Qur’an 23:14.

²⁸⁹ Serour, G. I., 1998. Reproductive Choice: A Muslim Perspective. In: J. Harris and S. Holm, eds., *The Future of Human Reproduction: Ethics, Choice and Regulations*. Oxford: Clarendon Press. pp.191-202.

²⁹⁰ Ibid.

In an article published by CBC News dated 18th June, 2004, describing the popularity and depth of medical tourism, it was stated that: “The reasons patients travel for treatment vary. Many medical tourists from the United States are seeking treatment at a quarter or sometimes even a 10th of the cost at home. From Canada, it is often people who are frustrated by long waiting times. From Great Britain, the patient can’t wait for treatment by the National Health Service, but also can’t afford to see a physician in private practice. For others, becoming a medical tourist is a chance to combine a tropical vacation with elective or plastic surgery.”

Medical tourism is actually thousands of years old. In ancient Greece, pilgrims and patients came from all over the Mediterranean to the sanctuary of the healing God, Asklepios, at Epidaurus. In Roman Britain, patients took the waters at a shrine at Bath, a practice that continued for 2000 years. From the beginning of the 18th century, wealthy Europeans travelled to spas from Germany to the

Hervey asks ‘whether it is equitable that some people can in effect “buy their way out” of ethical or moral choices given legislative force in their own Member State’.²⁹¹ From Henn’s point of view, reproductive tourists are seen as disloyal and as those who ‘circumvent restrictive national laws’.²⁹² Brazier describes it as trying to ‘evade their domestic constraints’,²⁹³ and Millns sums it up as ‘health-care shopping ... where the law may be more lax’.²⁹⁴ Thus, infertile couples’ behaviours and attitudes may be a combination of many factors. For example, their strict adherence to a belief in moral truth and a belief that ethical rules apply to everyone everywhere.

The primary sources of Islam, i.e. the Qur’an, Sunnah and Hadith, are the essential guidelines of the marital contractual relationship,²⁹⁵ creating the stability of family love, unity and security.²⁹⁶ There is a great emphasis on the Arabic expressional word *zawa’j*²⁹⁷ signifying a pair or a mate. It explains and describes the purpose of marriage, by distinguishing the family as the nucleus of Islamic society, brought about chiefly through a marital contractual relationship. Islamic Shari’ah law, while

Nile. In the 21st century, relatively low-cost jet travel has taken the industry beyond the wealthy and desperate.

²⁹¹ Hervey, T. K., 1998. Buy baby: the European Union and regulation of human reproduction. *Oxford Journal of Legal Studies*, 18: pp.228-229.

²⁹² Henn, W., 1999. Genetic screening with the DNA chip: a new Pandora’s box? *Journal of Medical Ethics*, 25: p.202.

²⁹³ Brazier, M., 1999. Regulating the reproduction business? *Medical Law Review*, 7: 166-193.

²⁹⁴ Millns, S., 2002. Reproducing inequalities: assisted conception and the challenge of legal pluralism. *Journal of Social Welfare and Family Law*, 24, 19-36.

²⁹⁵ Qur’an, 30:21 “And among His signs is this that He created for you mates from among yourselves, that you may dwell in tranquillity with them, and He has put love and mercy between your hearts. Undoubtedly in these are signs for those who reflect.”

Quran, 16:72 “And Allah has made for you mates (and companions) of your own nature, and made for you, out of them, sons and daughters and grandchildren. And provided for you sustenance of the best.” Islam considers marriage as one of the most virtuous and approved institutions. The Prophet Mohammad declared, “*There is no monasticism in Islam.*” He further ordained: “O you young men! Whoever is able to marry should marry, for that will help him to lower his gaze and guard his modesty.” (Al-Bukhari) “Marriage is my sunna. Whosoever keeps away from it is not from me.”

²⁹⁶ Qur’an: (*Sura al-Shura*) 42:49-50; (*Sura al-Nahl*) 16:72; (*Sura al-Ra’d*) 13:38; Hadith Shareef, reported by Abou Daoud; Hadith Shareef, reported by Bukhary and Muslaam.

²⁹⁷ Qur’an 4:1, 7:1, 39:1.

defining infertility and its alleviation to maintain the unity and preservation of a married couple,²⁹⁸ strictly lays down, as mentioned earlier, the broad principle that ‘no third party intrudes into the marital functions of sex and procreation’.²⁹⁹

However, the precarious Islamic position with regard to alleviating infertility and the Roman Catholic Church’s³⁰⁰ categorical prohibition of the use of alternative means of reproduction procedures are not compatible with the modern day freedom of alleviating infertility through the use of modern scientific human reproduction procedures. Islamic Shari’ah law somehow holds the middle position by allowing IVF procedures and artificial insemination, provided it is undertaken using sperm from the husband, ovum from the wife, and it is performed between a lawfully wedded couple.³⁰¹ However, “the ‘noble’ ends”³⁰² for which modern human reproduction technologies are applied are not meant to destroy the family unity. If the technical means facilitates marital happiness as its natural objective, then religious approval should not become a difficult task.³⁰³

In Islam, it is through the purity and genuineness of a relationship that affords the opportunity for a child to discover the identity of his/her real parents. It is believed

²⁹⁸ Op. cit. Gad El-Hak. 1980. It is permissible in Islam for a childless woman to have recourse to medical treatment to fulfil her cherished role of motherhood.

²⁹⁹ Op. cit. Serour, 1993a; op. cit. Kattan, 1991, pp.365-74; Serour, G. I., Aboulghar, M. A. and Mansour, R. T., 1990. *In Vitro* Fertilisation and Embryo Transfer: Ethical Aspects in Techniques in the Muslim World. *Population Sciences*, 9: 45-53.

³⁰⁰ *The Vancouver Sun*, 11th March, 1987. p.A7.

³⁰¹ According to *Mujtahids*, scholars of Islamic law with a comprehensive understanding – *vide* reference *Minhaj*, vol. 2, p.365, and *Tahir*, vol. 2, pp.622-623 – they mention the following possibilities:

1. It is permissible to invent an artificially made ovum, fertilise it with a man’s sperm and let the child develop in an artificial womb. In this case, the child will be fully related to the father. At most, he or she will be a child without a biological mother.
2. It is permissible to invent an artificially made sperm and inseminate it into a woman’s womb. Such a child will be fully related to the mother. At most, he or she will be a child without a biological father.
3. It is permissible to take an artificially made ovum and an artificially made sperm, and then fertilise and develop the two in the artificial womb. Such a child will be related to no one.
4. If a twin boy and girl are born through the above procedure, then in the first two cases they will be normal siblings for example, they cannot marry one another – but in the third case, they will not even be considered siblings because they do not have a parent.

³⁰² *Donum Vitae*, 9-10, 1987. Congregation for the Doctrine of the Faith, Instruction on Respect for Human Life in its origin and on the dignity of Procreation: Replies to certain questions of the day.

³⁰³ Keane, P. S., 1977. Sexual Morality: A Catholic Perspective. *Fordham Urban Law Journal*, XXX. 43-46.

that the goodness of the parental relationship in the long term creates a good environment for the child, who in return contributes to the establishment of a good society. Any distortion in family unity or relationships can eventually threaten the unity and stability of the family, leading to social disorder, unwarranted conflicts and disharmony.

Conversely, if it is maintained by the Islamic religious scholars that the successes of modern scientific human reproductive procedures are unduly being thrust into the existing Shari'ah law and it is ethically right to restrict their pursuit, then it maybe implies that in the absence of any justifiable cause or explanation, religious scholars are trying to suppress the infallible scientific reproductive developments and in return trying to stifle the desires of infertile couples to have their own baby. It can further be argued that the impetus to review the existing Islamic laws is not only coming from infertile Muslim couples, but that Muslim medical professionals may also feel it is necessary for Shari'ah law to heed modern scientific developments. It may also be that Muslim medical professionals have religious beliefs of their own which they do not readily incorporate into their medical practice. Instead, they may be inclined to feel that medical science is a force for good to serve humanity without inferences injected by religious authorities.

It was after the invention of the microscope that the inception of ART was properly understood and appreciated, and the reality of the interpretation of the Qur'anic verses came into being.³⁰⁴ The study of embryology reveals an amazing agreement between the Qur'anic verses and modern scientific reproductive procedures.³⁰⁵ However, the path of infertile Muslim couples seeking alleviation from their infertility has become gradually fraught with doubts, misconceptions and difficulties. Muslim scholars were hesitant to come forward with positive and meaningful intentions to clarify some of the unnecessary distinctions existing between Shari'ah law and the principles of secular systems. Elizabeth Spahn maintained that: "When 'objective' scientific information is skewed by the actual or imagined threat of religious controversy, the results of this self-censorship by science writers are felt

³⁰⁴ *Embryology*. Available at: <http://www.islamology.com/Overview/Science/Embroyology.htm> (Accessed 17th May, 2008).

³⁰⁵ *Ibid*.

throughout [secular] society.”³⁰⁶ It is only more recently that Muslim scholars are beginning to recognise and appreciate the great similarity of the Qur’anic verses in relation to reproduction and modern scientific knowledge.³⁰⁷ Therefore, it may be advantageous to reinterpret and reconcile Shari’ah law with the new scientific reproductive procedures to alleviate infertility.³⁰⁸

In the absence of the reinterpretation of existing Shari’ah law by Islamic religious scholars, the hope for infertile couples to access modern reproductive technologies is not an easy option.³⁰⁹ Infertile Muslim couples, especially those in secular states, are particularly worried that in the event of making use of ART it may categorise them as adulterous, incestuous, and ignoring the Islamic principle of *nasab*³¹⁰ “by virtue of introducing a third party into the sacred dyad of husband and wife”.³¹¹ In addition, the child of infertile couples born in a secular state may be stigmatised as illegal and devoid of any compassionate or emotional ambivalence,³¹² even in the eyes of his/her own parents.

Infertility, Implantation and Fertilisation

Not long ago, infertility was diagnosed to be a hormonal deficiency³¹³ and pregnancy was achieved either by returning the hormonal levels to normal or resorting to a surrogate to have a potential child. These treatments were mostly non-controversial from a religious and ethical point of view. Recent modern scientific developments in

³⁰⁶ Op. cit. Spahn, 1997, p.296.

³⁰⁷ Op. cit. *Embryology*.

³⁰⁸ Hathout, M. M., 1989. Surrogacy: An Islamic Perspective. *Journal of the Islamic Medical Association*, 21, pp.157-60.

³⁰⁹ Op. cit. Inhorn, 2003a.

³¹⁰ For example, under Shari’ah law the potential child born as a result of a third party donation cannot claim paternity or the ‘purity’ of lineage of the family in the absence of a known father.

³¹¹ Op. cit. Inhorn, 2003a.

³¹² Ibid.

³¹³ Lespinasse, J., Hoffmann, P., Lauge, A., Stoppa-Lyonnet, D., Felmann, F., Pons, J. C. and Lesca, G., 2005. Chromosomal instability in two siblings with gonad deficiency. *Human Reproduction*, 20 (1): 158-162.

ART have changed the treatment and its procedures dramatically. Kabir M. Banu az-Zabair welcomes the new developments by stating that:

“Despite the ethical problems posed by advances in reproductive technology, these advances are a welcome development for childless Muslim couples. Bringing about pregnancy by means other than direct sexual interaction between married partners is not considered an immoral act or interference with the will of God. In fact, Islam encourages what brings happiness to people or would lead to the general well-being of society. The new technologies merely make much more possible a natural phenomenon – that is, conception.”³¹⁴

Conversely, it is quite possible that all infertility treatments may not be successful. It is equally feasible that all human sexuality needs may not be fruitful, and sometimes it is not possible to avoid the need. For example, when either the husband or wife suffers from a terminal disease where pregnancy may not be advisable or socially formidable. From an Islamic point of view, the very concept of sexuality without production is an anathema. In Islam, infertility calls its existence from a lawful marriage contract. As it has already been explained and discussed, according to Islamic religious scholars alleviation of infertility must therefore be formulated with reference to Shari’ah law values even before thinking of technological interventions to alleviate it.³¹⁵

At present, Islamic religious scholars do not accept that the cure for infertility is necessarily a purely personal and private matter,³¹⁶ to be sought in scientific laboratories with different professional parties getting involved. It is against the basic ethical, moral and religious guidelines.³¹⁷ It bestows special favours on the couple to have children as God’s bounties, and no third party should intrude into the marital

³¹⁴ Op.cit. Kabir, 2007.

³¹⁵ Abu Abdallah, M. The Vatican view on human procreation [online]. Available at: <https://tspace.library.utoronto.ca/bitstream/1807/7493/1/mf05032.pdf> (Accessed 12th March, 2009).

³¹⁶ ‘Women in Islamic societies: a selected review of social scientific literature’, 2005. Report prepared by The Federal Research Division, Library of Congress, under an inter-agency agreement with the Office of the Director of National Intelligence/National Intelligence Council (odni/addnia/nic) and the Central Intelligence Agency/Directorate of Science & Technology.

³¹⁷ Fadel, H. E., 1993. Assisted Reproductive Technologies: An Islamic Perspective, *Journal of the Islamic Medical Association*, 25: 14-19.

functions of sex and procreation.³¹⁸ Therefore, Fadal Hossam maintained that: “And those related by *arham* [kindred by womb] have prior rights against each other”,³¹⁹ facilitating every child to know his/her father and mother in accordance with the rules of Shari’ah law.³²⁰ It is on account of this strict prohibition, i.e. the use of a third party or sperm banks, which constitute a threat to the existence of the Muslim family.

The significance of infertility³²¹ with regard to the implantation of sperm and its fertilisation is clearly revealed in the Qur’anic verses. For example, implantation is described in several verses of the Qur’an, particularly in chapter ‘*al-Alaq*’ of the Qur’an, where it is revealed that: “Createth man from a clot.”³²² Similarly, the development of an embryo inside the female uterus is described in chapter ‘*al-Mu’minoan*’ as: “Then fashioned We the drop a clot, then fashioned We the clot a little lump, then fashioned We the little lump bones, then clothed the bones with flesh, and then produced it as another creation. So blessed be Allah, the Best of Creator!”³²³

In chapter ‘*al-Hajj*’ it is revealed that: “... We have created you from dust, then from a drop of seed, then from a clot, then from a little lump of flesh shapely and shapeless, that We may make [it] clear for you”,³²⁴ and in chapter ‘*al-Sajdah*’, which

³¹⁸ Op. cit. Inhorn, 2006b, p.300.

³¹⁹ Op. cit. Fadel, 1993. p.17.

³²⁰ Op. cit. Hathout, 1989, p.106.

³²¹ According to Hossam Fadel, “Fertility takes place in the Fallopian tubes half-way through the menstrual cycle. The fertilising agent is the male sperm, or more exactly, the spermatozoon, a single fertilising cell being all that is needed. To ensure fertilisation, therefore, an infinitely small quantity of spermatid liquid containing a large number of spermatozoons (tens of millions at a time) is required. This liquid is produced by the testicles and temporarily stored in a system of reservoirs and canals that finally lead into the urinary tract; other glands are situated along the latter which contribute their own additional secretions to the sperm itself. The implantation of the egg fertilised by this process takes place at a precise spot in the female reproductive system: it descends into the uterus via a fallopian tube and lodges in the body of the uterus, where it soon literally implants itself by insertion into the thickness of the mucosa and of the muscle, once the placenta has been formed and with the aid of the latter. If the implantation of the fertilised egg takes place, for example, in the fallopian tubes instead of in the uterus, pregnancy will be interrupted.”

³²² Qur’an 96:2. It is extremely difficult to translate ‘*alaq*’ accurately.

³²³ Qur’an 23:14. The Arabic word ‘*muzgata*’ or ‘*mudghah*’ describes the progressive stage of an embryo’s development. The Arabic ‘*lahm*’ or more accurately ‘*lahmaa*’ describes the mass of bone structure being covered with muscle and then ‘intact-flesh’ meaning ‘*lahm*’.

³²⁴ Qur’an 22:5.

literally means ‘the prostration’, it is revealed that: “Then He fashioned him and breathed into him of His Spirit; and appointed for you hearing and sight and hearts.”³²⁵

Dr. Maurice Bucaille has quoted an extremely interesting incident of a young student’s interpretation of modern scientific developments in relation to the earlier interpretation of Qur’anic verses:

“I shall always remember the comment of an eighteen-year-old Muslim, brought up in Saudi Arabia, commenting on a reference to human reproduction as described in the Qur’an. He pointed to the Qur’an and said, ‘This book provides us with all the essential information on the subject. When I was at school, my teachers used the Qur’an to explain how children were born. Your books on sex-education are a bit late on the scene!’”³²⁶

The fear of abuse in the course of the infertility procedure, especially the possibility of a husband’s sperm being mixed with another person’s sperm, is rejected by many writers on the subject. For example, according to Nebenzahl: ‘the existence of such a fear, even if it is justified, ought to result in a blanket prohibition on the use of modern reproductive technology’.³²⁷ This statement by Nebenzahl can equally be applied when comparing the Qur’anic fertility guidelines of Shari’ah law, and the fear of abuse, somehow this is not apparent to the approximately 22 nations of the Middle East.

Treatments for infertility are nevertheless flourishing in many Middle Eastern and Asian Muslim states. For example, since 2003, Egypt, with a population of approximately 70 million, has 50 IVF centres, and even a relatively small country like Lebanon, with a population of around four million, has at least 15 IVF centres, —one of the highest per capita in the world.³²⁸ The IVF practices of both these countries when closely observed manifest a degree of convergence ‘between official

³²⁵ Qur’an 32.

³²⁶ Op. cit. Bucaille, 1980.

³²⁷ Op. cit. Fadel, 2002/2003, p.98.

³²⁸ Kahn, S. M., 2000. *Reproducing Jews: A Cultural Account of Assisted Conception in Israel*. Durham NC: Duke University Press.

discourse and actual practice'.³²⁹ As IVF or embryo transfer (ET) procedures are neither practised in a harmonious nor in a uniform manner amongst Muslim states, then it is difficult to argue with any degree of certainty whether infertile Muslim couples also have similar rules to abide by globally.

Again, in comparison with the other European countries who practise IVF procedures through secular cultural systems, both Egypt and Lebanon are undoubtedly influenced by non-binding but authoritative Islamic religious proclamations called *fatwas*.³³⁰ Any religious scholar may offer a *fatwa* to guide his followers.³³¹ Therefore, infertile Muslim couples are extremely concerned with regard to the use of IVF practices in a religiously correct manner.^{332, 333} Marcia Inhorn summarises the salient points of *fatwas* pertaining to ART as:

1. "Artificial insemination *with the husband's semen* is allowed, and the resulting child is the legal offspring of the couple.
2. *In vitro* fertilisation of an egg from the wife and with the sperm of her husband followed by the transfer of the fertilised embryo(s) back to the uterus of the wife is allowed, provided that the procedure is indicated for a medical reason and is carried out by an expert physician.
3. No third party should intrude into the marital functions of sex and procreation, because marriage is a contract between the wife and husband during the span of their marriage. This means that a third party donor is *not* allowed, whether he or she is providing sperm, eggs, embryos, or a uterus. The use of a third party is tantamount to zina, or adultery.

³²⁹ Meirou, D. and Schenker, J. G., 1997. The Current Status of Sperm Donation in Assisted Reproduction Technology: Ethical and Legal Consideration. *Journal of Assisted Reproduction and Genetics*, 14: 133-138.

³³⁰ In a *fatwa* the literary genre are normally discussed. Muslims as a rule do not enquire whether one form of treatment is more effective than the other. What they would like to be assured is that the medicine and medical procedure prescribed are acceptable within Islamic tenets. Islamic tenets also regulate sexual practice, while outlining reproductive guidance for premarital or extramarital infertile couples.

³³¹ The term 'his' followers is used because Muslim religious authorities who issue *fatwas* are always male.

³³² Zuhur, S., 1992. Of Milk-Mothers and Sacred Bonds: Islam, Patriarchy, and New Reproductive Technologies. *Creighton Law Review*, 25 (5): 1725-1738.

³³³ Op. cit. Meirou and Schenker, 1997.

4. Adoption³³⁴ of a donor child from an illegitimate form of medically assisted conception is not allowed. The child who results from a forbidden method belongs to the mother who delivered him/her. He or she is considered to be a *laqit*, or an illegitimate child.
5. If the marriage contract has come to an end because of divorce or death of the husband, medically assisted conception cannot be performed on the ex-wife, even if the sperm comes from the former husband.
6. An excess number of fertilised embryos can be preserved by cryopreservation. The frozen embryos are the property of the couple alone and may be transferred to the same wife in a successive cycle, but only during the duration of the marriage contract.
7. Multi-foetal pregnancy reduction (or so-called selective abortion) is only allowed if the prospect of carrying a high-order pregnancy (i.e. twins, triplets, or more) to viability is very small. It is also allowed if the health or life of the mother is in jeopardy.
8. All forms of surrogacy are forbidden.
9. Establishment of sperm banks is strictly forbidden, for such a practice threatens the existence of the family and the ‘race’ and should be prevented.
10. The physician is the only qualified person to practise medically assisted conception in all its permitted varieties. If he performs any of the forbidden techniques, he is guilty, his earnings are forbidden, and he must be stopped from his morally illicit practice.”³³⁵

There is a marked distinction noticeable between the *fatwas* issued by Sunni scholars and those issued by Shi’ite scholars. The *fatwas* issued by Shi’ite scholars, particularly the followers of Ayatollah Ali Hussein Khamanei, are in response to real-world questions, whereas the *fatwas* issued by Sunni scholars manifested a strict interpretation and adherence to the scriptural sources of the Qur’an, Hadith and Sunnah. Somehow, Shi’ite religious scholars based their decisions on the principle of

³³⁴ It is revealed through the Qur’an that: “Nor had He made your adopted sons your sons. Such is [only] your mouths. But God Tells [you] the truth, and He shows the [right] way. Call them by [the names of] their fathers: that is more just in the sight of God. But if ye know not their fathers [names, call them] your brothers in faith, or your *mawlas*.” Qur’an 33:4-5.

³³⁵ Op. cit. Inhorn, 2006c.

ijtihad as an exclusive guide to their scriptural reasoning when forming any decision about the validity of gamete donation in relation to infertile Muslim couples. Both the Shi'ite and Sunni scholars pay great allegiance to the principles of lineage and of claiming inheritance as a consequence of adopting the name of the biological father.

Lately, a noticeable divergence in opinion over third party gamete donation has arisen between Sunni and Shi'ite Islamic scholars. For example, Iran's leading Islamic scholar, Ayatollah Ali Hussein Khamanei, has permitted gamete donation under certain conditions.³³⁶ He is of the opinion that:

1. Egg donation 'is not in and of itself forbidden', but the egg donation and the infertile mother must conform to tenets of religious guidance in so far as parenting is concerned.
2. In the beginning the baby born through sperm donation was allowed to follow the name of the infertile father instead of that of the sperm donor. In so far as inheritance was concerned, the baby born through egg donation could only inherit from his biological father and the baby born with donor sperm would inherit from the infertile father as being an adoptive father, and not from the sperm donor. However, since the practice of sperm donation did not gain any popularity amongst Shi'ah scholars, it was finally declared illegal in Iran during August 2003. One of the main reasons for it becoming illegal was that sperm donors cannot temporarily marry an already married woman whose husband is infertile.³³⁷

³³⁶ The conditions could be that:

- a) the couple should make the decision of seeking a donor gamete in front of witnesses and in the presence of an IVF doctor. It should contain the agreement of both parties.
- b) the infertile husband would perform a marriage on the basis of *muta* for a specified period of time in consideration for an agreed sum of money. As a married Shi'a woman cannot marry another man, she cannot have a *muta* marriage with a sperm donor. It is Shi'a's belief that with *muta* the allegations of *zina* are avoided, and the woman releases the claim on the born child immediately the *muta* marriage ends. At this point the infertile mother takes over the duties of being a mother to the child born.
- c) the infertile couple should seek approval from a religious Court.

³³⁷ Tremayne, S., 2005. *The Moral, Ethical and Legal Implications of Egg, Sperm and Embryo Donation in Iran*. Paper presented at Reproductive Disruptions: Childlessness, Adoption, and Other Reproductive Complexities Conference, University of Michigan, Ann Arbor.

3. The donation of an embryo created from a sperm and egg from another couple is permissible in order to overcome both male and female infertility.³³⁸ In addition, if the embryo is donated by a married couple to an infertile couple, it is similar to that of an adoption; ‘it is considered *hallal*, or religiously permissible’.³³⁹ The only stipulation being that the Iranian infertile couple receiving the embryo must apply to the Courts for permission to obtain the embryo. Soraya Tremayne has pointed out that:

“Iran, it should be noted, is the only Muslim country in which Western-style adoption is allowed. It is also the only Muslim country to have recently allowed surrogacy, even though, so far, there is no law either endorsing or forbidding the practice of so-called rented mother.”³⁴⁰
4. The question of *maharam* is of a considerable importance. It is imperative that the opposite gender should avoid touching or seeing the child in a naked situation as it is considered *haram* in the eyes of Islamic law.
5. The child born through sperm donation would not carry the name of his biological father, but rather that of the sperm owner.

According to Marcia Inhorn,³⁴¹ Soraya Tremayne, an anthropologist, has documented with great ‘flexibility’ the position of Iranian IVF clinics:

“The [ARTs] are expanding so fast and demand for them by the patient is so high that keeping pace with them has become a major task, not just for the service providers, but also for the ruling clerics, who have to legislate to legitimise their use. The senior clerics are often faced with a *fait accompli* and find themselves catching up with the technology, rather than determining its use legally.”³⁴²

³³⁸ Ibid.

³³⁹ Ibid.

³⁴⁰ Ibid.

³⁴¹ Op. cit. Inhorn, 2003a.

³⁴² Op. cit. Tremayne, 2005.

On the question of IVF procedures being practised in Muslim states, Marcia Inhorn further elaborates that:

“in Iran and Lebanon, both Middle Eastern countries with Shi’ite Muslim majorities, at least some Shi’ite couples *are* beginning to receive donor eggs, donor embryos, and even donor sperm (at least in Lebanon), as well as donating their gametes to other infertile couples. For infertile Shi’ite couples who accept the idea of donation, the introduction of donor technologies is being described as a ‘marriage saviour’ helping to avoid the ‘marital and psychological disputes’—which were noted in the Khamanei *fatwa* – that may arise if the couple’s case is otherwise untreatable.”³⁴³

She further states that “Some are young college-aged women being recruited from the United States”³⁴⁴ who are anonymously donating their eggs to conservative Shi’ite couples, including, presumably, members of Hezbollah, which is officially condemned by the US administration as a terrorist organisation. Furthermore, quite interestingly, in multi-sectarian Lebanon, the recipients of these donor eggs are not necessarily only Shi’ite Muslim couples from Lebanon. Some Sunni Muslim patients from Lebanon and from other Middle Eastern Muslim countries are quietly ‘saving their marriages’ through the use of donor gametes, thereby secretly ‘going against’ the dictates of Sunni Muslim orthodoxy.³⁴⁵

On the strength of the above arguments, it is quite possible that some infertile Shi’ah couples living in secular states may make use of the facilities based on the strength of the above reasoning, and it may, in due course, equally apply to the Sunni sect of Islam, thereby diminishing the risk of divorcing each other on the grounds of infertility.

Muta and *Iabah* are the two comparable principles in Islam, which “without thereby sacrificing anything of comparable moral importance”³⁴⁶ are uncontroversial to each

³⁴³ Inhorn, M. C., 2004. Middle Eastern Masculinities in the Age of New Reproductive Technologies: Male Infertility and Stigma in Egypt and Lebanon. *Medical Anthropology Quarterly*, 18: 34-54.

³⁴⁴ Op. cit. Inhorn, 2004.

³⁴⁵ Ibid.

³⁴⁶ Singer, P., 1972. Famine, Affluence and Morality. *Philosophy & Public Affairs*, 1 (3): 229-243.

other. According to Peter Singer, this can be another avenue where Islamic religious scholars can help infertile Muslim couples by adopting a responsible attitude and refraining from converting modern reproductive technologies into irreconcilable issues.³⁴⁷ There seems to be a great divergence of opinion between the Sunni and Shi'ite sects on these principles. Sunni scholars do not agree with Shi'ite scholars on *mut'a*, "as a legal form of marriage practice".³⁴⁸ According to Shi'ite beliefs, the application of the principle of *mut'a*³⁴⁹ is a form of union between an unmarried Muslim woman and a married or unmarried Muslim man. This unity is contracted for a set period of time in return for an agreed amount of money.³⁵⁰

The application of the principle of *mut'a* is an old established custom whereby women who are middle-aged or an older woman who is either divorced or widowed agrees to a *mut'a* marriage in consideration of money, which she may need to support herself and her family in the absence of any other source of income. For a widow, this became more beneficial if her husband was killed in a war without leaving any support for her to live on. 'For Ahi'iet men, *mut'a* marriages could be contracted while travelling, or as a way of achieving marital variety and sexual pleasure.'³⁵¹ "Since the arrival of donor technologies, however, *mut'a* has also been invoked to make egg donation legal within the parameters of marriage."³⁵²

Similarly, the Shi'ite principle of *iabah*, established on the philosophical principle of reasoning that whatever is not prohibited by the primary sources of Islam, i.e. the Qur'an, Hadith and Sunna, may be permissible, is not entirely accepted by the Sunni sect.

³⁴⁷ Ibid. p.232.

³⁴⁸ Haeri, S., 1989. *Law of Desire: Temporary Marriage in Shi'i Iran*. Syracuse, NY: Syracuse University Press.

³⁴⁹ The legal procedure to arrange a *muta* marriage is quite simple. The marriage usually takes place, in confidence, in a secluded room at an IVF clinic. The procedure stipulates the presence of one witness, but the marriage itself does not require legal registration. The anonymous donor may never meet the recipient of her egg or their temporary husband. But it is quite different for a couple procuring an embryo transfer. The onus is put upon the IVF clinic to ascertain their Iranian nationality and that they are morally sound and will prove to be responsible parents.

³⁵⁰ Op. cit. Haeri, 1989.

³⁵¹ Ibid.

³⁵² Op. cit. Inhorn, 2006c, p.435.

Dr. S. M. Fatemi, in his article ‘Egg and Embryo Implantation: a Comparative Study of Shi’ite Teachings and Kantian Ethics’, states that “my argument in favour of permissibility is based on the doctrine of *ibaha*, according to which everything that is not expressly prohibited by an authentic source is permissible.”³⁵³ Subhani supports Fatemi’s interpretation of *ibaha* by stating that ‘Everything is permissible to you until you know that it is specifically impermissible.’³⁵⁴ This leads to further consideration that in reply to the doctrine of *ibaha*, ‘*Fiqhi*’ should not be considered within legal norms in their contemporary positive sense, notwithstanding the fact that they played such a prominent role in the early period of Muslim history.’³⁵⁵

In addition, it is quite apparent that: ‘Qur’anic verses^[356] as well as traditions referred to by Shi’ite scholars in support of the doctrine of *ibaha* and the practical principle of *bara’ah* are morally justifiable. Thus there is no need to examine them in a contextually detailed manner.’³⁵⁷

The Qur’anic verse 2:286 is of particular importance in relation to the doctrine of *ibaha*. This is mainly because the awareness or knowledge of a thing being permissible or impermissible is fundamental to holding one liable, bearing in mind the legal principle of criminology that if there is no law criminalising an action, then there should not be any punishment for it, *qubh iqab bila bayan* (wrongness of punishment without prior proclamation).³⁵⁸ Compilation of Shi’ite versions of the Hadith confirm that ‘Everything is permissible unless there is a prohibiting order

³⁵³ Op. cit. Fatemi, 2005.

³⁵⁴ Subhani, J., 2000. *Irshad al-uqul ila mabahith al-usul*. Collected by al-Hajj M. al-Amili. Beirut: Dar al-Adwa. p.378.

³⁵⁵ Op. cit. Fatemi, 2005, p.298.

³⁵⁶ Qur’an 6:145: “I find not in the message received by me by inspiration any [meat] forbidden to be eaten by one who wishes to eat it, unless it be dead meat, or blood poured forth, or swineflesh – for that verily is foul – or the abomination which was immolated to the name of other than Allah. But [even so], if a person is forced by necessity, without wilful disobedience, nor transgressing due limits – your Lord is Oft-Forgiving, Most Merciful.” Qur’an 65:7 “... Allah puts no burden on any person beyond what He has given him. After a difficulty, Allah will soon grant relief.”

³⁵⁷ Sabzewari, S. A. al-A., 1985. *Tahdhib al-usul*, 2nd edn. Beirut: Dar al-Islamiyya.

³⁵⁸ Muhageq, D. M., 2002. *Qawa ed fiqh, Bakkshe Jaza’i*. Tehran: Markaz Nashr Ulum Islami.

against it'³⁵⁹ and 'Everything is permissible for you unless you know that it is specifically prohibited'.³⁶⁰

An element of precaution is also attributed to the conception of permissibility; for example, it is specifically ordained by the Qur'an that: "And pursue not that of which you have no knowledge; for every act of hearing, or seeing, or of [feeling in] heart, will be enquired into [on the day of reckoning]" (17:36). In other words, do not rely on speculation (*la taqfu*) in an instance where you are without knowledge.³⁶¹

The application of the principle of *ibaha* with regard to the donation of eggs and embryo implantation is obvious because the Qur'an and Sunnah do not indicate their prohibition, nor is there an explicit or implied ordination in this respect. It is therefore:

'the very absence of an explicit prohibition situates the case within the realm of the doctrine of *ibaha*. *Ibaha* does not convey any obligation. Rather it indicates freedom from obligation. Individuals are, therefore, free to decide either to be involved in the process of egg and embryo implantation or not.'³⁶²

As the issue of egg and embryo implantation has neither a spiritual nor early textual precedence, Shi'ite sources therefore have a major influence in deciding issues pertaining to modern human reproduction technologies through the doctrine of *ibaha*.

As it has already been observed, revelations concerning human reproduction are:

"scattered throughout the Qur'an. It is only recently that the scientific meaning of some of these verses has been appreciated fully. The long delay in

³⁵⁹ Op. cit. Amili, 1992, p.173.

³⁶⁰ Ibid. p.189.

³⁶¹ Op. cit. Subhani, 2000, Vol. 1, p.394.

³⁶² Op. cit. Fatemi, 2005, p.304.

interpreting these verses correctly resulted mainly from inaccurate translations and commentaries and from a lack of awareness of scientific knowledge.”³⁶³

Although the Sunni sect are also followers of the Islamic principle of *ijtihad*³⁶⁴ through *aql*, intellectual reasoning, it is the *Shi’ah’iet ulema* in particular who have deduced their own reasoning in adopting the procedures of gamete donation. In their opinion, the application of *ijtihad* yields more ‘flexibility and pragmatism’ in considering the adaptation of gamete donation technological development.³⁶⁵ In a sense, *ijtihad* has ‘ultimately led to a great heterogeneity of opinion and practice within the Shi’ite community’.³⁶⁶

Marcia Inhorn and Sherifa Zuhur both agree and enumerate upon the rules and regulations laid down by the Shi’ite states:

1. When an infertile couple need a donor they should lodge their application at the Shi’ite religious Court for approval. Consideration of the application will be given in accordance with the merit of the case.
2. The Court will determine the religious ‘reference’ to which the infertile couple should adhere.
3. With the agreement of both parties, i.e. the infertile couple and the women contracted, the decision is announced in the presence of witnesses, preferably in the presence of an IVF professional doctor.
4. On receipt of the Court’s permission, the assisted reproduction procedures would take place, either by retrieving the ovum or the woman will gestate the child until delivery of the child.
5. The child born will be designated as *laqit*, meaning out of wedlock, without bearing any family name or a father’s name.

³⁶³ Moore, K. L. *A Scientist’s Interpretations of Reference to Embryology in the Qur’an*. Available at: www.allahahuakbar.net/quran/references_to_embryology_in_the_quran.htm.

³⁶⁴ There are five categories of Shari’ah: a) Obligatory (*wajib*); b) recommended (*Sunna*); c) permitted (*mubah*); d) undesirable but not forbidden (*makruh*); e) forbidden (*haram*).

³⁶⁵ Cole, J., 2002. *Sacred Space and Holy War: The Politics, Culture and History of Shi’ite Islam*. London: I. B. Tauris.

³⁶⁶ Op. cit. Inhorn, 2006c, p.437.

Both Marcia Inhorn and Sherifa Zuhur further point out that if the child was born in a Sunni state to a single mother, as a donor child this may not be socially acceptable.^{367, 368}

In addition, the ruling passed by the Iranian *majlis* Parliament, and endorsed by the Guardian Council, has restricted gamete donation to married persons only. Marcia Inhorn endorses the earlier argument in her thesis that:

“Even though the law is brief (less than one page) it states clearly and succinctly who can and cannot donate and receive gametes. Egg donation is allowed, as long as the husband marries the egg donor temporarily – thereby ensuring that all three parties are married. Sperm donation, on the other hand, is legally forbidden, because a sperm donor cannot temporarily marry an already married woman whose husband is infertile. Quite interestingly, however, embryo donation – which involves both sperm and egg from another couple – *is* allowed in order to overcome both male and female infertility. Because an embryo comes from a married couple and is given to another married couple, it is considered *hallal*, or religiously permissible.”³⁶⁹

Preceding appraisals, arguments and discussion of these boil down to a conclusive fact that in the mist of uncertainties, doubts and indecisiveness, infertility is still enshrouded with the issue of third-party donation. Thus, the earlier proposition of this thesis, i.e. whether the interpretation of Qur’anic allegorical revelations are conclusively understood and unanimously adopted by all the religious schools of Islam, still remains a moot proposition.

Morgan Clarke in his article has highlighted some of the above misgivings and doubts,³⁷⁰ by arguing that some of the *ulema* were of the opinion that Khamanei’s permissive *fatwa* on donor technology did not conform to convincing legal thinking.

³⁶⁷ Ibid. p.39.

³⁶⁸ Op. cit. Zuhur, 1992.

³⁶⁹ Op. cit. Inhorn, 2006c, p.437.

³⁷⁰ Clarke, M., 2006. Shi’ite Perspectives on Kinship and New Reproductive Technologies. *ISIM Review*, 17: 26-27.

For example, Ayatollah Muhammad Husayn Fadallah, Lebanon's most prominent Shi'ite religious figure, has raised doubts about Ayatollah Khamanei's permission of sperm donation, although he agrees with the permission of egg donation. Neither Ayatollah Ali Hussein Khamanei nor Ayatollah Muhammad Husayn Fadallah have endeavoured to explain that the *mut'a* marriages are independent of *zina* complications.³⁷¹ These sorts of confusing and inconclusive arguments do not leave much scope for infertile Muslim couples to anchor their beliefs in an assertive manner.

The path would seem to be set 'for ethics to follow rather than to lead the issue',³⁷² and the degree to which some Shi'ite clergies are 'pushing the envelope in the realm of reproductive science and technology is quite remarkable'.³⁷³ Although donor law and procedures, as outlined previously, are heading towards an interesting new direction, the obvious refrain from its acceptance hinges on the sacredness of the marital contract. Even if it is argued that third party involvement does not constitute the physical 'body-contact' of an adulterous relationship, or any apparent desire for a physical extramarital relationship,³⁷⁴ it is still fervently argued that:

“... by virtue of introducing a third party into the sacred dyad of husband and wife is sufficient. It is the very fact that another man's sperm or another woman's eggs enter a place where they do not belong that makes donation of any kind inherently wrong and threatening to the marital bond.”³⁷⁵

It also broadens the scope of confusing the issue of lineage and the claim of a potential child to become a legitimate inheritor of an infertile couple's estate.

In their global survey conducted in 1997, Meirow and Schenker point out that “the degree of convergence between official discourse and actual practice”³⁷⁶ taking place

³⁷¹ Ibid.

³⁷² Op. cit. Tremayne, 2005.

³⁷³ Op. cit. Inhorn, 2006c, p.439.

³⁷⁴ Ibid. p.440.

³⁷⁵ Inhorn, M. C., 2005. Religion and Reproductive Technologies. IVF and Gamete Donation in the Muslim World. *Anthropology News*.

³⁷⁶ Op. cit. Meirow and Schenker, 1997, p.134.

in 62 Muslim states is noteworthy. They also reveal that “[i]n many Islamic countries, where the laws of Islam are the laws of the state, donation of sperm was not practised. Artificial insemination donation (AID) is considered adultery leads to confusion regarding the lines of genealogy, whose purity is of prime importance in Islam.”³⁷⁷ In fact, in the majority of Islamic Sunni states the prohibition against gamete donation is regulated by Shari’ah law or is incorporated as a medical code of practice.

The adaptation of some of the modern IVF procedures by Shi’ite religious scholars have led the way to deviate, to some degree, from the deeply held religious beliefs with regard to lineage, and the biological unity of a devout family life. By adapting to the modern reproductive technologies, it has also enabled infertile couples to save their marital status. Some two decades ago, this revolutionary leap to transform gender relations amongst infertile Muslim couples was beyond imagination. “Infertile couples have begun to reconsider traditional notions of biological kinship, even if ‘social parenthood’ of a donor child is still not widely embraced.”³⁷⁸ Consequently,

“both fertile and infertile men with ‘reproductively elderly’³⁷⁹ wives are lining up at IVF clinics to accept the eggs of donor women. Furthermore, in multi-sectarian Lebanon, the recipients of donor gametes are not necessarily only Shi’ite Muslim couples, but include some Sunni Muslim and Christian couples as well.”³⁸⁰

As a result, it would seem that the Sunni scholars’ long-established guidance pertaining to the prohibition of third-party donor gamete is gradually weakening and serious consideration is being given to their unalterable position regarding assisted reproductive issues.

³⁷⁷ Ibid.

³⁷⁸ Op. cit. Inhorn, 2006c.

³⁷⁹ Op. cit. Inhorn, 2006c, p.443.

³⁸⁰ Ibid, pp.445-446.

In other words, Shi'ite Islamic scholars have left the door ajar for other Sunni schools of thought to ponder over the paramount issue that for a married Muslim couple to live without children is cruel. In fact, the primary inspiration for getting married is to have children, form a united family, and once the children are born they are always loved and nurtured by their parents. Before the inception of modern reproductive technologies, Muslim women under Islamic Shari'ah law were allowed to divorce their husbands on account of proven infertility,³⁸¹ but they generally preferred to hide their infertility to 'diffusing the embarrassment of their husband's reproductive emasculation'.^{382, 383}

Prior to Ayatollah Ali Hussein Khamanei's *fatwa*, the only positive guidance from Islamic religious scholars to infertile Muslim couples was based on negative choices. Thus, a Muslim woman would either permanently resign to pass her life without children, an option which for a woman is extremely hard to accept due to family and social pressures, or to stigmatise her husband's masculinity and divorce him for the sake of children. It was also equally permissible for a husband to divorce his infertile wife for the sake of children. Ayatollah Ali Hussein Khamanei's idea of egg donation, commonly described as a 'marriage saviour', has turned the tables.

As a result, ART became quite plausible:

“Some Sunni Muslim patients from Lebanon and from other Middle Eastern Muslim countries such as Egypt and Syria are quietly slipping across transnational borders to 'save their marriages' through the use of donor gametes, thereby secretly 'going against' the dictates of Sunni Muslim orthodoxy.”

Such border crossings have also been mentioned by Morgan Clarke when he wrote that: 'Indeed, patients come from other countries to benefit from this relatively

³⁸¹ The application of intracytoplasmic sperm injection (ICSI) can now establish the infertility of a husband beyond any doubt. It can further be proved when producing poor sperm, azoospermia or a lack of sperm on ejaculation.

³⁸² Inhorn, M. C., 2003b. The Worms are Weak: Male Infertility and Patriarchal Paradoxes in Egypt. *Men and Masculinities*, 5: 236-256.

³⁸³ Op. cit. Inhorn, 2006c.

relaxed regime.’³⁸⁴ Maria Inhorn also confirms that: “The same is true in Iran, where, according to IVF clinic staff, scores of Persian Gulf Arabs from countries such as Saudi Arabia and Kuwait are travelling to Tehran in pursuit of donor gametes.”³⁸⁵ However, David Hess has a rather unique interpretation of the changes taking place in Iran and Lebanon, stating that:

“Anthropology brings to this discussion a reminder that the cultural construction of science is a global phenomenon, and that the ongoing dialogue of technoculture often takes its most interesting turns in areas of the world outside the developed West.”³⁸⁶

Whereas many Islamic scholars are still of the conclusive view that Shari’ah law restricts a husband and wife as one couple to procreate without the interference of a third party, Shi’ite opinion in the light of Ayatollah Ali Hussein Khamanei’s *fatwa* is quite the contrary.

In Morgan Clarke’s opinion, “Muslims have for the most part welcomed these new medical techniques as a remedy for infertility.”³⁸⁷ This is an encouraging statement for those infertile Muslim couples living in secular states for the possibilities of alleviating their infertility, especially for women to achieve the prime esteem of their community by becoming mothers.

One of the distinguishing points which infertile Muslim couples encounter in a secular society, especially in the UK, is the paternity and maternity of a child born due to sperm or ovum donation. If the infertile couple follows the *fatwas* of Ayatollah Ali Hussein Khamanei or Ayatollah Muhammad Husayn Fadallah, then it is the gestational carrier who would be considered the mother of the child, but the father of the child will be the sperm donor and not the person who takes the

³⁸⁴ Op.cit. Clarke, 2006c.

³⁸⁵ Op. cit. Inhorn, 2006c, p.445.

³⁸⁶ Hess, D., 1994. Parallel Universes: Anthropology in the World of Technologies. *Anthropology Today*, 10: 16-18.

³⁸⁷ Op. cit. Clarke, 2006.

responsibility of raising the child.³⁸⁸ According to The Human Fertilisation and Embryology Act of 1990, ‘the other party to the marriage shall be treated as the father of the child unless it is shown that he did not consent to the placing in her of the embryo or the sperm and eggs or to her insemination’.³⁸⁹

In an effort to diminish the existing differences between Islamic religious scholars and professional scientists on the question of modern human reproductive technologies, an alternative course of action could be to encourage mutual dialogues. While listening, appraising, and arguing their point of views, they may decipher common causes of differences and devise possible solutions, either by reviewing or amending early interpretations of established Islamic cultural traditions. Both the Qur’an and Hadith indicate a very important principle, which is a prevention system of causing no harm.³⁹⁰ “Revile not yet those whom they call upon besides God, lest they out of spite revile God in their ignorance.”³⁹¹

In so far as scientific knowledge is concerned, then according to Omenn it is primarily ‘asking questions and finding credible ways to answer them’.³⁹² Thus, professional scientists through acquired knowledge endeavour to answer questions and ‘enhance public understanding and decision making about risks to health and economic competitiveness’,³⁹³ realising full well that science cannot tamper with the religious beliefs which believers hold firmly in their daily lives. In contrast, scientific research should be done in full view, and if required be fully conversant with society as a whole, never forgetting that every scientist also has moral and religious beliefs of some sort.³⁹⁴

³⁸⁸ Ibid. p.27.

³⁸⁹ Section 28(b) of The Human Fertilisation and Embryology Act 1990.

³⁹⁰ Inhorn, 2006b, p.291.

³⁹¹ Qur’an 6:108.

³⁹² Omenn, G. S., 2006. Grand Challenges and Great Opportunities in Science, Technology, and Public Policy. *Science*, 314: 1696.

³⁹³ Ibid.

³⁹⁴ Leshner, A. I., 2006. Science and Public Engagement. *The Chronicle of Higher Education*, B 20.

Modern scientific reproductive research pervades every aspect of an infertile couple's sufferings. Whether the infertile couples are allowed to benefit from them or not due to religious beliefs is entirely a different issue. Past historical events signify that whenever individuals or nations hesitate in adapting scientific and technological advancement in any field of life, they then embrace a period of vacuum in their welfare and progress. As Professor David Hilbert stated: "Who of us would not be glad to lift the veil behind which the future lies hidden: to cast a glance at the next advances of our science and the secrets of its development during future centuries?"³⁹⁵ ART has so far proven to be the fastest growing area in medicine,³⁹⁶ yielding a better understanding of reproductive biology, but its reflections on ethical, social, psychological, religious and legal aspects have blurred the existing medical arrangements.³⁹⁷ There needs to be a detailed co-ordination with existing Islamic cultural systems before it can be deemed as appropriate and legible guidelines in the development processes are involved.³⁹⁸ Undoubtedly, there has been a huge leap from the early egg donations which took place during the 1980s,³⁹⁹ and was first utilised in Australia in 1983,⁴⁰⁰ to the present day achievements. Within the last few decades, ART has gone from older tubal techniques such as GIFT (gamete intra-fallopian transfer), TET (tubal embryo transfer) and PROST (pronuclear stage transfer) to more widely used uterine transfer techniques such as IVF and intracytoplasmic sperm injection (ICSI).⁴⁰¹

As stated earlier, any marital relationship sooner or later cherishes the desire to have one's own offspring. This is also a common instinct amongst infertile couples and their inability to have their own children makes their anxiety grow deeper. In Islam,

³⁹⁵ Hilbert, D., 1900. *Nachricht Konigl. Ges. Wiss. Gottingen*, 253. Available at: <http://aleph0.clarku.edu/~djoyce/hilbert/problems.html>.

³⁹⁶ Op. cit. Haji, 2003.

³⁹⁷ Op. cit. Larijani and Farzaneh, 2007.

³⁹⁸ Norhayati, H. A., 2003. Assisted Reproduction – Islamic Views on the Science of Procreation. *Eubios Journal of Asian and International Bioethics*, 13: 59-60.

³⁹⁹ Op. cit. Larijani and Farzaneh, 2007, p.399.

⁴⁰⁰ Steinbock, B., 2004. Payment for egg donation and surrogacy. *The Mount Sinai Journal of Medicine*, 71(4): 255-265.

⁴⁰¹ Bongso, A. and Ratnam, S., 1991. Medically assisted conception: The new millennium. *Brunei International Medical Journal*, 1: 75-84.

the Qur’anic revelation is that: “Wealth and progeny are the allurements of this world.”⁴⁰² Although Islam acknowledges that infertility is a significant hardship,⁴⁰³ it nevertheless does not mean that infertile couples are to be restricted to prayer and are prohibited from seeking remedies for their inability to have children. “For every disease God has created a cure except senility [meaning death]. Allah did not decree a disease, unless he provided a treatment”,⁴⁰⁴ implying that God provided treatment for its legal use. “Prophet Mohammad mentioned the necessity to seek remedy for any disease, and sterility is a disease that might be curable; therefore to seek lawful treatment is permissible.”⁴⁰⁵ It is also revealed in the Qur’an: “So progeny of Adam seek cure for your ailments”,⁴⁰⁶ and Abraham is reported in the Qur’an as saying: “And when I get sick it is He who cures me.”⁴⁰⁷ This aspect is further discussed under the heading ‘lineage’ in this thesis.

Shari’ah law acknowledges that the foregoing narration endorses the principle that an infertile couple should seek a remedy for their infertility within the prescribed limits.⁴⁰⁸ Similarly, along with Genesis 16, the Qur’an also cites examples of Abraham and Zacharyyia, whose wives were barren: “Then did Zacharyyia pray to his Lord, saying, ‘O my Lord! Grant unto me from You a progeny that is pure, for You are He that hears the Prayers’.”⁴⁰⁹ God answered their prayers: “And the angels gave Abraham glad tidings of a son endowed with knowledge.” It stands to reason that modern reproductive technologies in principle are a perfectly legitimate pursuit, provided that harmful or illegitimate methods are adjusted.⁴¹⁰

⁴⁰² Qur’an 18:46.

⁴⁰³ Op. cit. Fadel, 1993.

⁴⁰⁴ Majlis Al-Fiqhiya, 2002. *Al-Kuwitiya. Rafadh Al-Tadawi*, Kuwait.

⁴⁰⁵ Op. cit. Inhorn, 2006b, p.291.

⁴⁰⁶ *Mishkat Al Masabih*, 2: 945-947, 1975 (James Robson trans., Sh. Muhammad Ashraf, Kashmiri Bazar, Lahore).

⁴⁰⁷ Qur’an 26:80.

⁴⁰⁸ Shari’ah law, Islamic jurisprudence, designates the rules and regulations governing the lives of Muslims and is derived principally from the Qur’an and Hadith. *The Encyclopaedia of Islam*, 321 (2nd edn., 1996).

⁴⁰⁹ Qur’an 3:38.

⁴¹⁰ Op. cit. Hathout, 1989, p.105.

Conclusions

In the wake of modern reasoning and through the application of the principle of *ijtihad*, Shi'ite and Sunni sects alike may seek recourse to applying more frequently modern reproductive technologies with certain acknowledged religious restrictions. Over a short period of time it may become normal practice amongst infertile Muslim couples living in secular states, reshaping the instances of infertility in a dynamic way. Soraya Tremayne proposes an encouraging interpretation of the principle of *ijtihad* by stating that:

“*Ijtihad* has been used extensively in the present day Iran by religious leaders, and has allowed them to make substantial use of technology in all spheres of life. Islamic laws faced with modernity and change is constantly debated, revised and conclusions have been reached among the senior jurists. And, if approved, *fatwas* (religious decrees) are given to legitimise the use and adjustment in new situations, be it medicine, technology or other matters.”⁴¹¹

Undoubtedly the Iranian and Lebanese *fatwas* have led the way to introducing a mandatory change in the existing system for guiding infertile couples, a long-awaited change to human suffering. It has brought about a new form of understanding and the appraisal of biological relationships by cementing the important principle of *nasab* and by maintaining the role of family unity and of parenthood.

Furthermore, these *fatwas* and their subsequent adherence have given an alternative meaning to ‘parenthood’, and how marriages can be saved in cases of infertility through ART. “That the ‘brave new world’ of third-party donation has been introduced to the Muslim world by otherwise conservative, male Iranian Shi'ite religious leaders may come as a surprise to Westerners.”⁴¹² The suffering of infertile Muslim couples can easily be discussed in this equation by the Shi'ite interpretation of *ijtihad*. In other words, Shi'ite law demarcating the line is passable when

⁴¹¹ Tremayne, S., 2005. *The Moral, Ethical and Legal Implications of Egg, Sperm and Embryo Donation in Iran*. Paper presented at Reproductive Disruptions: Childlessness, Adoption, and Other Reproductive Complexities Conference, University of Michigan, Ann Arbor.

⁴¹² Op. cit. Inhorn, 2006b, p.311.

considering and applying modern reproductive technologies procedures, even though IVF procedures have been declared partially permissible⁴¹³ under some conditions.⁴¹⁴

Iran has shown a path for other Islamic states to follow and adopt ethical, moral and social transformations for infertile Muslim couples living in secular countries or otherwise. It may perhaps be advantageous for infertile couples living in multicultural and secular societies to receive generous, helpful, sensible and prudent guidance from Islamic religious scholars in order to articulate their existence with the trend and behavioural conduct of their society. If such guidance becomes feasible, it will then be conceivable that some of the restricted Islamic beliefs may also receive recognition within these multicultural and secular societies. At present, the lack of adherence to secular society's conduct, especially with regard to modern reproductive technologies as being practised, do not easily facilitate the well being of infertile Muslim couples.

While it is feasible for a multicultural or secular society to be tolerable, it is equally important for religious groups, especially Islam, to realise that Shari'ah law is not carved in stone and bears no corresponding responsibility when conducting a dialogue of finding solutions for infertility. Any unilateral, indecisive dedication and steadfastness to one's beliefs without having recourse to either understanding or to appreciating others' points of view will obviously create unwarranted problems. It is therefore important to establish whether there is any scope for reconciling some of the differences within Islamic Shari'ah law and thus in addressing secular social and cultural policies.

In her article, Diane Tober confirms that:

“Even though legal adoption is practised in Iran – with the child receiving a birth certificate in the adoptive couple's name after a six-month period of

⁴¹³ Ikemoto, L. C., 1996. The infertile, the too fertile, and the dysfertile. *Hastings Law Journal*, 47: 1007-1061.

⁴¹⁴ The conditions stipulated being that:

- a) The IVF procedure must involve a married couple
- b) The sperm must be from the husband, and the eggs from the wife
- c) The IVF procedure is performed during the valid marriage of the couple
- d) The procedure must be conducted by a 'competent team' to reduce the chances of failure.

adjustment – the social and cultural resistances to adoption remain strong in that country, making this a ‘last resort’ for infertile Iranian couples.”⁴¹⁵

Admittedly, the rapid growth and success of modern reproductive innovations have given insufficient time to Muslim theologians to produce ready answers, mainly because the issues encroach upon human lives and are not easily discernible. For Islamic religious scholars to grasp the issues resulting from modern reproductive technologies and come forward with amicable answers is not proving easy.

The network of Islamic schools of thought is widely spread, with as many as eight surviving schools, namely Hanafi, Shafit, Hanbali Maliki and Zahiri in Sunni Islam, and Jafari, Zaidi and Ismaili in Shi’ite Islam.⁴¹⁶ In addition to these schools, every eminent *alim*, a student of the Qur’an and Hadith, may have his/her own interpretation of various juristic problems which arise from time to time.⁴¹⁷ Ultimately, according to the Qur’an, it is the responsibility of the individual, not the community or a body of any Islamic religious scholars, to apply scriptural interpretations as he/she deems just and proper, and to also be responsible for them. This does not mean that the individual can arbitrarily apply meaning to the *suras* of the Qur’an to suit to his/her cause; nor is it justified to defer any needed action to Allah to decide what is right or wrong.⁴¹⁸ In other words, had the Qur’anic revelation not been immutable, Shari’ah law would have been consistent in every quarter of the various Islamic schools. It is universally accepted that the Qur’an is divine and its allegorical revelations are interpreted according to human reasoning. These reasonings can be edited, changed, and if need be improved to incorporate changes over time. For example, what was deemed to be just with regard to women’s rights in medieval ages, may not be so in the modern age. “The idea of justice also changes with changing consciousness and what is just in one age may not necessarily be just

⁴¹⁵ Tober, D. M., 2004. *Shi’ism, Pragmatism, and Modernity: Islamic Bioethics and Health Policy in the Islamic Republic of Iran*. Paper presented at the University of Michigan, Ann Arbor; Janet Heindl, personal communication, 8th July, 2004.

⁴¹⁶ Engineer, A. A. *Islam and Religious Freedom*. The Institute of Islamic Studies and Centre for Study of Society and Secularism.

⁴¹⁷ Ibid.

⁴¹⁸ Ibid.

in the other.”⁴¹⁹ This applies equally to the problems faced by infertile couples. According to Dr. Iqbal:

“The only alternative open to us, then, is to tear off from Islam the hard crust which has immobilized an essentially dynamic outlook on life, and to rediscover the original verities of freedom, equality, and solidarity with a view to rebuild our moral, social and political ideas out of their original simplicity and universality.”⁴²⁰

If the above reasoning is to be followed to its logical conclusion, then this thesis would argue that the application of *ijtihad* is more welcome today than at any other time in order to deliberate the fate of infertile couples living in Western secular societies. It would seem that Shari’ah law is often inoperative in many aspects of modern reproductive technologies as applied today. “The Islamic world, if it has to understand the dynamic spirit of Qur’an, and enact it in real life, will have to enact changes in the Shari’ah laws. ...”⁴²¹ When analysing Qur’anic verses from the principle of *ijtihad*, it becomes quite apparent that the Qur’an was mindful of what was just in the era when it was revealed and what ought to be just in the transcendental sense. The Qur’an never eternalises the notion of justice which was established at the time of its revelation. In addition, Shari’ah law has no directive to maintain the *status quo* and not to change over time.

According to Engineer, “The Qur’an must be re-read and re-interpreted in today’s context as the classical jurists read and interpreted it in their own context. No reformation is possible without such re-reading and re-interpreting the Qur’anic verses.”⁴²²

⁴¹⁹ Engineer, A. A. Islam, Women and Gender Justice.

⁴²⁰ Iqbal, M., 1954. *The Reconstruction of Religious Thought in Islam*. Lahore: Shaikh Muhammed Ashraf, p.156.

⁴²¹ Engineer, A. A., 2004. Islam Women and Gender Justice. *Islam and the Modern Age*.

⁴²² Ibid.

Chapter Three

Human Reproduction Within the Concept of Secularism and Infertility

In the previous chapter it was considered how lineage in Islam is regarded as more of a spiritual issue than a social issue, and the widely held Islamic religious belief that assisted reproduction is acceptable only when the sperm and ovum are from a legally married couple was questioned. It was argued that in clearly defined circumstances egg or sperm donation might be acceptable under Islamic ethics. Living in a secular society presents choices in reproduction that might not be available otherwise. Thus, a key issue is how infertile Muslim couples may respond to these opportunities and how Islam in general functions within such a secular world in providing guidance. While secular systems do not register a challenge to religious beliefs and convictions, it has, however, by separating the doctrines of politics and religion, given people an opportunity to determine their own life trajectory. Whilst these two worlds may be separated, they are not distinct, or at least their concerns overlap, particularly where ethical decisions are involved or where the direction appears to be out of line with the religious moral compass. Contrary to An-Na'im's assertions,⁴²³ some have argued that through its prescriptive approach, Islam is particularly incompatible with a secular order. A key issue is therefore how Islam responds to change within a secular context and whether this genuinely reflects the ethical needs of its followers.

The main focus of this chapter is on the appraisal of an ethical discussion on modern human reproductive technologies, suggesting a lack of a positive approach from traditionalist Islamic leaders in the context of secularism and modernity. In particular, it will consider how Islamic principles are insufficiently in harmony with modern developments in the science of human reproduction.

⁴²³ Op. cit. An-Na'im, 2008.

In addition, it will consider contemporary Muslim reactions to bio-ethical approaches to different traditions⁴²⁴ within modern multi-faith societies, especially for Islam, which remains controversial for traditionalists. It will also be argued that in the light of modern reproductive procedures, Islamic religious scholars are ethically responsible to the future generations of Muslims and need to reassess the issues that arise for Muslim couples. During the course of the discussion the difference between ‘traditionalist’ and ‘orientalist’ Muslim scholars will also be considered.

Secularism and Infertility

Sexual relationships have become a battleground for a religious crusade against what is perceived as increasingly liberal secularism. It is as though religion exists within but not as part of the process of a secular world. Thus, one view of secularism is that religious beliefs play little or no part in contributing to its development; the two worlds, spiritual and earthly (real), exist in separate parts of a secular universe. In the secular universe, science becomes the driving force both for a change in ethics and of morality. Thus, “the tool of the secular perspective is, not the Bible or the Qur’an, but objective human knowledge and experience. In the modern world, this basically means modern science.”⁴²⁵ It appears that the two worlds are in perpetual combat, especially when some religious leaders and scholars regard secularism as challenging fundamental religious beliefs and undermining its moral order, the very core of religious belief.⁴²⁶

One problem may lie in the objective nature of scientific enquiry; by its methods, no view can be held to be sacrosanct, and it is only as good as the evidence that supports it. As science increasingly appears to produce answers, so it diminishes the need for mythology to explain the world and how it works.⁴²⁷ The very essence of modern

⁴²⁴ Cultural traditions in Islam can be a prime source of authority, not belonging to any school of thought, and pervades many aspects of social life.

⁴²⁵ Op. cit. Mustafa, 2006.

⁴²⁶ Dawkins, R., 2007. *The God Delusion*. Black Swan.

⁴²⁷ Ibid.

science is that it challenges established understanding and beliefs. However, this scientist's view of secular society is often applied to the applications of scientific knowledge and technology, where the 'objective' measure of its utilitarian value takes precedence over other moral concerns. Ethics becomes a calculation without the need of principles.⁴²⁸ If ART can alleviate human infertility, then these procedures cannot be aligned on the basis of theistic principles; a calculation of benefit and harm, and free informed choice forms the driving imperative action.

Islamic traditionalists hold to a fundamentally different view of the tenets of Islam to that scribed by orientalist scholars. In his book, *Traditional Islam and the Modern World*,⁴²⁹ Seyyed Hossein Nasr defends traditional Islam against both modernism (whether European or Islamic) and fundamentalism. Orientalists provide a historical perspective, viewing the development of Islamic ideas in the context of historical and cultural influences. For the orientalist, Islamic culture and ideas have evolved in response to political, cultural and philosophical issues. In contrast, the Islamic traditionalists view Islam as being formed from fundamental principles and thus adopt a defensive approach to modernist influences. Where there is a change in the human condition, such as modern developments in assisted reproduction, then traditionalists seeks a position intrinsic to Islam and free from the influence of the change itself. Rather than adapting to the change, traditionalists seek to influence or control the change from fundamental principles. Traditionalists seek to maintain a purity of ideas and to hold positions free from incongruent influences. The orientalist seeks to understand Islam in the context of Western philosophical ideas as developed in the Orient. Thus, it denotes a gathering of knowledge⁴³⁰ within Oriental traditions. From the Western perspective, the 'orient' is a relative, not absolute term.⁴³¹ It is not seen as a closed system, but one influencing and being influenced by the exchange of ideas and culture through trade and commerce in response to the problems of the day; it has a political and economic context involving a flux of ideas. In contrast, the

⁴²⁸ Dancy, J., 2006. *Ethics Without Principles*. Clarendon Press.

⁴²⁹ Nasr, S. H., 1987. *Traditional Islam and Modern World*. Currently unavailable.

⁴³⁰ Said, E., 1978. *Orientalism*. London: Routledge & Kegan Paul.

⁴³¹ www.muslimphilosophy.com/ip/rep/H014.htm (Accessed 5th May, 2011).

traditionalist seeks a set of constants, a 'purity' that is Islam within the context of this change. Such principles are not contextual and changeable but are immutable.

Since the seventeenth century traditionalists have considered the factors influencing religious ethics, cultural traditions, social systems and indeed historical philosophies of religious communities.⁴³² As Rosenthal maintains, "Islamic civilisation as we know it would simply not have existed without the Greek heritage."⁴³³ Islamic traditionalist philosophers such as Ibn Sina, al-Kindi, al-Farabi and Ibn Rushd, tried to resist such intrusions by explaining that Islamic philosophers accepted, improvised and transformed scientific history as a 'Brethren of Purity' (Ikhwan al-Safa),⁴³⁴ rather than adopt 'foreign-ideas'.⁴³⁵

Muslim philosophers afforded further opportunities to orientalists, such as those Walzer⁴³⁶ and Rosenthal describe, to keep finding something new with which to interpret the Islamic sciences. This often forced traditionalist Muslim scholars to assiduously defend against these challenges. The Orientalists' main argument would be that Islam should re-interpret existing Islamic tenets in the light of modern developments – for example, reproductive technologies – as these developments present choices unforeseen in earlier times when what the traditionalist may view as the fundamentals were put down. Thus, the existence of an imaginary dichotomy between modern developments such as reproductive technologies and the Islamic theological milieu creates a problem for those infertile Muslim couples who are in need of infertility treatment. It is therefore the existence of old Islamic philosophical parameters which are preventing modern scientific human reproductive achievements by posing an ethical, political and cultural constraint, symbolising a

⁴³² Corbin, H., 1993. *History of Islamic Philosophy*. Trans. L. Sherrard. London: Kegan Paul International.

⁴³³ Rosenthal, F., 1975. *The Classical Heritage in Islam*. London: Routledge & Kegan Paul.

⁴³⁴ The Brethren of Purity, *Ikhwan al-Safa*, was the name of a secret society of Muslim philosophers in Basra, Iraq, in the 10th century CE. The Arabic "*Ikhwan al-Safa*" (Loyal Friends, People worthy of praise and Sons of Glory") can be translated as either the "Brethren of Purity" or the "Brethren of Sincerity"; various scholars such as Ian Netton prefer "of Purity" because of the group's ascetic impulses towards purity and salvation.

⁴³⁵ www.muslimphilosophy.com/ip/rep/H014.htm (Accessed 5th May, 2011).

⁴³⁶ Walzer, R., 1962. *Greek into Arabic*. Oxford: Cassirer.

superior religious identity in the existing Islamic laws.⁴³⁷ Thus, they are opposed not simply because they present nuanced and contextual ethical dilemmas, but because they are considered to challenge the core principles, or to challenge the ‘purity’ of Islam. There is therefore no room here for a pragmatic approach considering a balance of potential benefits and harms.

The traditionalists identify themselves as Salafists,⁴³⁸ those who espouse *taqlid*,⁴³⁹ i.e. blind adherence to one of the four traditional schools of Sunni jurisprudence (*maddhab*).⁴⁴⁰ Traditionalists believe in the continuation of traditional religious institutions which were developed and formalised after the establishment of Islam, such as the four legal schools (*madhhab*). While acknowledging the significant contributions of *madhhabs* in providing the principles of *Fiqh* (Islamic jurisprudence), they resolutely defend that Muslims scholars have not to blindly adhere to one *madhhab* in preference to other forms of legitimate scholarship in accordance with the Qur’an and Sunnah.

Traditionalists believe in pursuing Islamic studies through traditional religious institutions (*madrasah*), such as Al-Azhar University, assigning considerable importance to the master-disciple relationship based on piety and wisdom. Most of

⁴³⁷ Said, E., 1979. Islam, Orientalism and the West. *The Times*, 16th April.

⁴³⁸ A Salafi (Arabic: سلفي) is a follower of an Islamic movement that takes the *Salaf* of the patristic period of early Islam as exemplary models. The word *Salaf* is an Arabic noun which translates to “predecessor”, or “forefather” and who are collectively referred to as the “*Salaf as-Saaleh*”, or Pious Predecessors, namely the first three Muslim generations: the *Sahabah* (“Companions”), the *Tabi’un* (“Followers”) and the *Tabi’ al-Tabi’in* (“Those after the Followers”). These three generations and their understanding of the texts and tenets of Islam are looked upon by Salafis as the Islamic orthodoxy. Salafism has been usually used by Sunni theologians since the fifth Muslim generation or earlier to differentiate the creed of the first three generations from subsequent variations in creed and methodology.^{[3][4]} Landmarks in the history of Salafi revival are the three scholars commonly titled with the honorary “*Sheikh ul-Islam*”, namely, Ahmad ibn Hanbal (d.240 AH / 855 AD), Taqi ad-Deen Ibn Taymiyyah (d.728 AH / 1328 AD), and Muhammad ibn Abd al-Wahhab (d.1206 AH / 1792 AD); all were revivers of the Sunnah and of the Salafi creed and methodology in their respective generations.

⁴³⁹ *Taqlid* literally means “to follow (someone)”, “to imitate”. In Islamic legal terminology it means to follow a *mujtahid* in religious laws and commandment as he has derived them. A *mujtahid* is a person who is an expert of Islamic jurisprudence (*fiqh*); he is also called a *faqih*.

⁴⁴⁰ *Madhhab* is a Muslim school of law or *fiqh* (religious jurisprudence). In the first 150 years of Islam there were many such “schools”. For example, the Islamic jurisprudence schools of Damascus in Syria, Kufa and Basra in Iraq, the Maliki, while the other Iraqi schools were consolidated into the Hanafi. The Shafi’i, Hanbali, Zahiri and Jariri schools were established later, though the latter two schools eventually died out.

the traditionalists are supporters of *tawassul*,⁴⁴¹ and adhere either to the Ash'ari⁴⁴² or Maturidi⁴⁴³ school of Kalam,⁴⁴⁴ forming a neutral or ambiguous ethical relationship with modern reproductive technologies.

The issues of interfaith dialogue and the possible deeper understanding of truth cementing the union of faiths have long been debated in traditional circles, with few consequences. Traditionalists also believe that a human being is by nature religious, and progress is an illusion.⁴⁴⁵

“A hunger for truth will drive global culture back towards the religion that has always sustained human beings, and future progress will involve the psycho-spiritual sciences, both traditional religious disciplines and more empirically-oriented parapsychology.”⁴⁴⁶

In contrast to the rationalism of modern enlightenment, religious traditionalism essentially advocates the revelation of divinity as an absolute authority. Such authority would not then be subject to critical and contextual reasoning, it is a revealed truth. Such a view inevitably conflicts with scientific advance and with critical reasoning, and whilst reconciling the two approaches to truth may not be impossible, it is certainly a challenge. Thus, assisted conception, or the transfer and manipulation of embryos to avoid genetic diseases, might appear to conflict with religious texts, but it is difficult to see how such choices could have been foreseen in a revelation that was relevant at the time of the Prophet and there is no specific guidance in the scriptures about such choices. Although modern biology gives us new insights into reproduction and its functions, it does not provide us with a new

⁴⁴¹ Tawassul is a religious practice in which a Muslim seeks nearness to Allah, i.e. “To draw near to what one seeks after and to approach that which one desires”.

⁴⁴² Abu al-Hasan al-Ash'ari was a famous teacher of atomism, which was the basis for propagating a deterministic view that God created every moment in time and every particle of matter. Thus, cause and effect was an illusion.

⁴⁴³ Maturidis are followers of Abu Mansur Al Maturidi's theology, which is a close variant of Ash'ari theology (Aqidah). The Maturidis, Ash'aris and Atharis are all part of Sunni Islam, which makes up the overwhelming majority of Muslims.

⁴⁴⁴ Names of schools.

⁴⁴⁵ Traditionalism Versus the Secular New World Order: An Alternative to “The Clash of Fundamentalisms”? www.mujca.com/traditionalism.htm (Accessed 28th April, 2011).

⁴⁴⁶ Ibid.

insight into identity. Modern genetics is discussed as the defining feature of an individual and of the relationship of an individual with others, yet genes are simply part of the machinery for the synthesis of proteins. As will be argued, both religion and science are guilty of developing a mythology about genetics.

When this view was extended to the irrational rejection of modernism, traditionalists were excommunicated in 1855 for their extreme position.⁴⁴⁷ Islamic traditionalists consider Islam to be the single sacred tradition that fulfils all their aspirations and is itself a source of enlightenment. For the traditionalist, moral truth is revealed through this enlightenment and human endeavour is to be judged or guided by it. However, modern science tends to view 'truth' in a fundamentally different way. The developments of modern science not only present new ethical dilemmas, but when applied in a utilitarian calculation it also contributes to the ethical resolution of these issues. Utilitarian approaches to ethics consider a prediction or assessment of potential harms and benefits resulting from given forms of action, with a view that such actions should seek to maximise the benefit to the greatest number; so science becomes the arbiter of the very dilemmas it produces. The fundamentalists see science in the secular domain not simply as separating the spiritual from the earthly, but further pushing the spiritual aside. The spiritual plays a reduced if not a marginalised role in the social order and is confined to the private lives of believers. For the fundamentalist, science itself becomes a moral challenge for which they seek an 'authentic' response.^{448, 449}

If free informed choice becomes the core ethical construct, then the key issue is whether and how religions should adapt it.⁴⁵⁰ Fazlur Rahman describes the polarisation between secularists and fundamentalists as:

⁴⁴⁷ Carl, W. E., 1994. Traditionalism, the Perennial Philosophy, and Islamic Studies. *Middle East Studies Association Bulletin*, 28 (2): 176-181.

⁴⁴⁸ Ibid.

⁴⁴⁹ Ibid.

⁴⁵⁰ A befitting example is the Egyptian law where a wife can stipulate in the marriage contract that there will be no second wife unless she is barren or ill and thus cannot bear children or satisfy her husband's sexual needs, in which case she can then give her husband permission to take a second wife. It is no longer simply a man's right to take a second wife and this is a change from Shari'ah law.

“The revivalist or the fundamentalist is a type of conservative who is a direct heir of the pre-modernists reform movement. ... But the crux of the matter is that the modernist, who is a product of modern universities and not a scholar of Islam, cannot interpret this adequately and is, therefore, always defensive against the aggressive revivalist.”⁴⁵¹

As a result:

“large numbers of the modernists gradually lose their initial moorings and gravitate to conservatism or revivalism. The modernist is, therefore, silent almost like the secularist, a target but never an archer: one cannot name a single modernist who on Islamic political theory in the modern term.”⁴⁵²

Gibbs supports Rahman’s assertion by stating that the fundamentalist criticism is almost exclusively directed against the modernist treatment of Islamic history.⁴⁵³

Therefore, religious leaders face unique problems. On the one hand they may try to hold back the tide, as some have tried to do in relation to research on human embryonic stem cells,⁴⁵⁴ by challenging the freedom of science to develop new understandings and new possibilities; whilst on the other, they may accept the legitimacy of free scientific enquiry and concentrate their concerns on the implications of the technologies produced. With either strategy there is a feeling that they are being overwhelmed and their concerns are being pushed aside.⁴⁵⁵ There is an entrenched, drawn out battle between religious belief and the ‘objective’ view of nature and its causation, as in the debate about whether ‘creationism’ should be taught in schools together and equally with the concept of evolution (a particular battle between secularists and fundamentalist Christians). In this sense religious

⁴⁵¹ Op. cit. Rahman, 1979, p.230.

⁴⁵² Ibid.

⁴⁵³ Gibb, H. A. R., 1947. *Modern Trends in Islam*. Chicago: University of Chicago Press.

⁴⁵⁴ Op. cit. Rahman, 1979, p.230.

⁴⁵⁵ Ibid.

leaders find it difficult to co-operate with secular perspectives and contend “that a person cannot be solidly moral without being religious”.⁴⁵⁶

However, this view of the role of religion in a secular order is far too pessimistic. It is in the nature of an open society that it should question established belief, but that does not mean that it is without belief, or that it is without morality. Similarly, religious scholars can object to ovum transfer or egg donation, but they cannot deny the existence of successful human reproductive technology and its potential to help infertile couples. As argued previously, their position is based on an overtly biological rather than a social interpretation of personhood.

Morality does not depend on religion or faith,⁴⁵⁷ although historically it may have developed from it; instead, it depends on a conceptual understanding of right and wrong. Moral codes are found throughout history and in all beliefs and settings.⁴⁵⁸ Being moral may be an essential part of being human in an evolutionary sense. Being moral may be a codification of expectation and duty within human families, tribes and communities and finds expression through, rather than being derived from, religious belief. Seeking a concept of God does not depend on a particular view of God. If it is agreeable with religious concepts it is only to the limited extent that God is the Creator of the universe and of all living things. To elevate ethical constructs to the level of immutable moral principles, simply to hold ground in relation to a perceived threat from a secular society, would be a mistake. Developing a religious ethic that enables holders of faith to contribute to and fulfil themselves in a secular domain is not simply pragmatic, but is itself a sound moral strategy. The problems arising in society affect all members of that society regardless of religion, and the ethical problems of infertility, reproduction, identity and lineage are no exception.

Furthermore, the view that a secular society is amoral, and by implication a threat to morality itself, produces a bunker mentality where views are held rigidly in order not

⁴⁵⁶ Audi, R., 1989. The separation of Church and state and the obligation of citizenship. *Philosophy and Public Affairs*, 18 (3): 259-296.

⁴⁵⁷ James Rachels. (Chapter 4 of Rachels, *The Elements of Morality*, 4th ed.) www.wutsamada.com/alma/ethics/rachels4.htm.

⁴⁵⁸ Austin, Cline. Godless Moral Values: Can Godless Atheists have more values. atheism.about.com/od/aboutethics/p/GodlessMorality.htm.

to lose ground or slide down a slippery slope. Nor are atheistic scientists free from this bunker mentality; advances in biological sciences are presented as nails in the coffin of religious belief. In a recent newspaper article, Professor Colin Blakemore, the neuroscientist and former head of the Medical Research Council in the UK, suggested that science is just ‘one gene away from defeating religion’⁴⁵⁹ and states further that: “When we understand how our brains generate religious ideas and what the Darwinian adaptive value of such brain processes is, what, he asks, ‘will be left for religion?’⁴⁶⁰ His question of course is rhetorical. Presumably his answer would be ‘nothing!’”

This approach produces a polarisation of science and religion. Yet, from an ethical perspective, science produces uncertainty rather than absolute answers and it does so by the very choices it presents; new technologies, new treatments, new sources. It also produces a continual assessment of risk, of potential benefits and harms. How the benefits and harms should be weighed is not always clear and cannot be provided by science itself.

As Giddens puts it:

“The original progenitors of modern science and philosophy believed themselves to be preparing the way for securely founded knowledge of the social and natural worlds: the claims of reason were due to overcome the dogmas of tradition, offering a sense of certitude in place of the arbitrary character of habit and custom. But the reflexivity of modernity actually undermines the certainty of knowledge, even in the core domains of natural science.”⁴⁶¹

The perception that there can be no limits or that morality itself becomes contextual and mutable sets the scene for a constant battle between religious edicts on morality and a world seen to be without belief. This is a problem for all faiths, but there are reasons for arguing that it is a particular problem for Islam because of the

⁴⁵⁹ Op. cit. Blakemore, 2009.

⁴⁶⁰ Ibid.

⁴⁶¹ Op. cit. Giddens, 1991, p.21.

significance of Shar'iah in the ethical process. Christianity may adopt moral positions and it may seek guidance in biblical texts and the teachings of Christ, but unlike Islam it has no particularly defined process for doing so. However, in a secular domain, Shar'iah becomes a process within an established system of justice and it is not always clear how these can be reconciled. If a law is applied then it must be seen to be applied fairly and consistently for all in society and not solely for a marginalised minority. Although in a few Islamic states such as Iran, there have been positive moves to the acceptance of egg donation, for Muslims in most countries it is assumed that gamete donation is prohibited by Islam,⁴⁶² or at best the Islamic position is uncertain.

Many eminent writers such as Prof. Tariq Ramadan⁴⁶³ have considered whether Islam is compatible with secularism.⁴⁶⁴ Depending upon the unity and diversity,⁴⁶⁵ then Islam is compatible with secularism. If it is not, then it is only on account of the differences in interpretations assigned to immutable verses of the Qur'an. Various writers of different Islamic schools of thought, such as An-Na'im,⁴⁶⁶ have rendered their subjective asserted opinions over a period of time, and these are not compatible with the changing times. For example, the deprivation of women's independence and rights, punishment by stoning to death, and cutting off hands do not carry the support of the majority of modern thinkers. The Qur'an did not ordain these specific punishments, except by revealing enough allegorical warnings of punishment for such crimes as an obligation for believers.

Secularism pre-empts that excessive religious interference be excluded from civil or public affairs. This does not mean that a secular society will become antipathetic towards religion. In fact, a just secular society would be one that upholds the right to religious belief and a freedom to express that belief. It basically requires a separation

⁴⁶² Op. cit. Clarke, 2011.

⁴⁶³ Op. cit. Ramadan, 2004.

⁴⁶⁴ '40 reasons why Tariq Ramadan is a reactionary.' www.workersliberty.org/node/4004 (Accessed 5th May, 2011; www.whatnextjournal.co.uk/Pages/politics/Samary.html (2007). Tariq Ramadan has his place in the European Social Forum.

⁴⁶⁵ Robertson, B. A., 1994. Islam and Europe: An Enigma or a Myth? *Middle East Journal*, 48 (2): 288-308.

⁴⁶⁶ Op. cit. An-Na'im, 2008.

of religion and the state. In contrast, an Islamic State is one where the law follows the particular teachings of Islam as expressed through Shari'ah law. However, Shari'ah as an ethical process is contextual and can be responsive to local circumstances and customs. A key issue then is to what extent Shari'ah can be accommodated within and adapt to the circumstances of a secular society. It can therefore be whether Islamic guidance on the use of reproductive technology is equally applicable in different contexts to Muslims in Saudi Arabia and Muslims living in the UK. Secularism is not devoid of religions, nor are people who believe in secularism irreligious. It only means that the system of justice is not based upon or laid down by any one religious set of beliefs; a just secular society protects all the rights of legitimate religious beliefs. It also does not mean that 'secular dimensions'⁴⁶⁷ will gradually disappear globally in the near future.

Muslims in the Islamic diaspora may find themselves by migration or by birth in secular societies with different historical and traditional cultural systems. Secular political structures have ensured free expression and inclusiveness of all legitimate belief systems where Muslims have been in a minority. In these circumstances, the nature of a secular society allows the free expression of religious belief, and also that one set of beliefs does not hold sway over any other with regard to law making or in administering justice. Thus, adapting to a secular society is not to abandon religious beliefs, but it does require a reflection of this context in making appropriate moral and ethical judgements. Religious views on ethical issues such as abortion are not disregarded in a secular order, nor are any particular religious beliefs paramount in determining the law in this difficult area. This is true for ethical issues arising from developments in assisted conception.

Veit Bader has stated that:

“mature, rational religious people or individuals should be guided by the ‘principles of conscience’, by a principle of ‘secular rational’ and by a higher second-order principle of ‘theo-ethical equilibrium’ requiring them to ‘seek at least a measure of reflective equilibrium among their beliefs and attitudes. A

⁴⁶⁷ Op. cit. Marty, 2003, p.42.

kind of ‘rational integration between religious deliverances and insights’ and ‘secular ethical considerations’.”⁴⁶⁸

This aspect of secularism has not received wider publication in the literature because of the mode of absolving undue restrictions resting on individuals’ conduct. According to Robert Audi, “there is a general view that in a free and democratic society the state should neither establish a church nor impair religious liberty”.⁴⁶⁹ There is little doubt prevailing that the modern democratic secular state emphasises the rights and liberties of individuals in the choices they make and thus individual obligations. It increasingly sees society, not as a body representative, but as an aggregate of individuals or groups with the function of the state to be that of protecting the rights of those individuals to make decisions appropriate for their circumstances. This emphasis on the individual and individual freedom developed as a counter to the rise of nationalism and the oppressive state in the early 20th century, as, for example, in the Soviet Union or Nazi Germany.

However, with this emphasis on individual choice, where does this leave medical practice in relation to religious beliefs, or beliefs held by cultural groups, which may then influence decisions taken by an individual? This is a particular problem where the clinician may feel that such beliefs run counter to their obligations to treat their patients – the classic example of this is the difficulty Jehovah’s Witnesses have with blood transfusions and is a particular problem for a clinician when parents refuse to give consent for transfusion or organ donation in the treatment of their children.

In an attempt to solve this problem, Gregory Bock put forward four criteria that would help physicians to consider a patient’s request for medical treatment based on religious beliefs: “The four conditions suggested are the belief (1) is shared by a community, (2) is deeply held, (3) would pass the test of a religious interpreter and (4) does not harm others.”⁴⁷⁰ It is mainly because religion is more apt at describing and explaining the human condition at its most fundamental level, offering a person

⁴⁶⁸ Bader, V. 1999. Religion Pluralism: Secularism or Priority for Democracy? *Political Theory*, vol 27, No 5, pp.597-633.

⁴⁶⁹ Ibid.

⁴⁷⁰ Bock, G. L., 2008. Medically valid religious beliefs. *Journal of Medical Ethics*, 34: 437-440.

a unique concept of personal identity in making sense of himself and the world around him in a complete and satisfying way; it extends “the meaning to life”.⁴⁷¹ In essence, community and group belonging is part of an individual’s personal identity; who they are is in part at least answered by a consideration of with whom they are affiliated and the beliefs of such a group. An emphasis on personhood as an isolated, independent being is a modern concept.

Orr and Genesen have broadened the scope by claiming that anchorage on religious beliefs, when seeking medical treatment, be given ‘more weight than a patient’s idiosyncratic choice’.⁴⁷² Michael Wreen⁴⁷³ implicitly came to Orr and Genesen’s support by arguing that religious values constitute an ‘integrating and reconciling’ function in a personal life.⁴⁷⁴ According to Ruth Macklin:

“It is one thing to require that cultural, religious, and ethnic groups be treated as equals; that conforms to the principle of justice as equality. It is quite another thing to say that any cultural practice whatever of any group is to be tolerated and respected equally. This latter view is a statement of extreme ethical relativism.”⁴⁷⁵

When all these similar views expressed by eminent writers are analysed, from the point of view of this thesis, it can be argued that modern reproductive technologies are encroaching neither on religious pursuits nor does a secular society impose an ethical view. Whilst society may provide for individual choices such as abortion or the use of embryos in research, it does in a way impose a particular view on religious groups.

⁴⁷¹ Ibid.

⁴⁷² Orr, R. D. and Genesen, L. B., 1997. Requests for ‘inappropriate’ treatment based on religious beliefs. *Journal of Medical Ethics*, 23 (3): 142-147.

⁴⁷³ Wreen, M. J., 1991. Autonomy, religious values and refusal of lifesaving medical treatment. *Journal of Medical Ethics*, 17(3): 124-130. Wreen is of the opinion that religious beliefs if held firmly hold special standing for the believer because he in relation to others attributes more significance. It, in a sense, represents the core value of an individual’s identity.

⁴⁷⁴ Ibid.

⁴⁷⁵ Macklin, R., 2006. Ethical relativism in a multicultural society. In: T. A. Mappes, D. Degrazia, eds., *Biomedical Ethics*. Boston: McGraw-Hill. p.126.

New developments in assisted reproduction create or add to moral uncertainty, particularly when it raises questions about the nature of personhood. For example, the posthumous use of sperm to produce children from a ‘father’ who has died raises legitimate issues of duties to the offspring and fatherless children become conceivable with the artificial production of sperm from stem cells.⁴⁷⁶ These developments are now almost as predictable as the speed with which the technology is moving forward. The media tends to sensationalise these developments as ‘Frankenstein’ creations or by suggesting that scientists have gone mad and are ‘playing God’. Yet they often have motives far greater than are portrayed. The creation of artificial sperm from a young person with cancer, for example, may be a way of restoring fertility damaged by treatment. Nevertheless, legitimate anxiety is felt by religious leaders. This legitimate concern on the part of Islamic religious scholars is also felt by other religions and throughout societies as well.⁴⁷⁷ The initial reaction is to ‘hold the line’. These developments, in the opinion of religious scholars, are a ‘step too far’ as they challenge the core principles of the Qur’an and Hadith sources. It is only with time that legitimate exceptions to a prohibition are understood when cases of genuine suffering are presented and deliberated.

Several points can be made here: 1) Islam in a secular context is not alone in considering this moral challenge as it is a challenge faced by all religions, and 2) it is more likely to be able to reflect on the ethics of these exceptions as it has a built-in facility to do this. Besides, it is one of the regulatory requirements of state law that whether secular or otherwise, once a child is born, it inescapably follows that he/she will enjoy all rights, privileges and immunities similar to any other child.⁴⁷⁸ Therefore, there should be no distinction between modern technologies and old established religious cultural systems in this respect. There can also be no differentiating basis between a child born to an infertile Muslim couple in a secular society and a child born in a religious society. Although infertile Muslim couples may be admonished for deviating from the accepted Islamic religious practices, it cannot affect the rights and privileges of a child. These rights and privileges are

⁴⁷⁶ Balint, J. A., 2002. Ethical issues in stem cell research. *Albany Law Review*, 65: 729-742.

⁴⁷⁷ Op. cit. Spahn and Andrade, 1997.

⁴⁷⁸ *Webster v Reproductive Health Services*. 492 US 490 (1989).

deeply rooted in scientific, religious and secular systems, and the aftermath of religious or secular superiority over modern technologies' interventions is irrelevant.

Infertile Muslim couples, while living in a secular society, genuinely hold on to long-held religious beliefs and reluctantly abstain from benefiting from modern scientific treatment to alleviate infertility. This is because they are seldom sure, whether under the theological tug of war their refusal to ART is purely a needless deprivation or it is a fervent decision in their obedience to their religious belief and conviction. They may prefer to forego the privileges and benefits in preference to what is promised in the afterlife. Kamal Ghozzi is quite clear on the issue when he states:

“When a society experiences major, uneven, or rapid social or cultural changes, its religious elites find themselves in the midst of a critical situation. Either they display a sufficient level of adaptability to their changing environments without compromising the fundamentals of their tradition and the main tenets of their dogma, or they prove incapable of breaking through their doctrinal boundaries, and fall into decay. In this respect, I suggest that adaptability of the ulema groups to environmental changes highly depends upon their relative acquisition of three institutional and symbolic capitals – group consensus, institutional autonomy, and charisma.”⁴⁷⁹

To adjust existing religious interpretations so that these can come abreast with modern reproductive technologies will hold apparent advantages and benefits in alleviating infertility, rather than sticking to the ‘bureaucratic apparatus’⁴⁸⁰ of outdated cultural doctrines.

In addition, Islamic religious scholars take it upon themselves to guide their followers in the affairs of their personal lives, such as issues of assisted human reproduction pertaining to procreation, in the case of infertility. By doing so, they gain an unbounded distinction in the eyes of society. For example, Islamic religious

⁴⁷⁹ Ghozzi, K., 2002. The Study of Resilience and Decay in Ulema Groups: Tunisia and Iran as an Example. *Sociology of Religion*, 63 (3): 317-334.

⁴⁸⁰ Weber, M., 1968. Economy and society, an outline of interpretive sociology. G. Roth, C. Wittich, eds., New York, NY: Bedminster Press. Cited by Ghozzi, 2002.

scholars can dictate quite clearly under what circumstances infertile Muslim couples can arrange for reproductive procedures to have their own child. At the same time, infertile Muslim couples may be voluntarily seeking guidance from Islamic religious scholars to make sure that the chosen modern reproduction procedures are permissible within Islamic religious guidance.

According to Steven Goldberg, “[r]eligion is trivialised when it becomes just a minor branch of science”.⁴⁸¹ However, the concept of plurality in Islam is an integral part of its ideological spiritual expression, distinguishing an important difference between religion and the principles of secular states.⁴⁸² It is, therefore, the steadfastness of Islamic tenets which are noticeable in all the European secular states.⁴⁸³ Under the Council of Europe, infertile Muslim couples enjoy equal rights of protection, freedom of expression,⁴⁸⁴ and an independence in respective religious following,⁴⁸⁵ yet to organise and converge the differences between secular and religious principles is proving to be a difficult task for secular states as well as for religious institutions.

Some Muslims have overcome the strict adherence to the principles of religious beliefs and upheld political doctrines which do not stringently conflict with their fundamental religious beliefs. Akeel Bilgrami elaborates this distinction by stating that:

“The idea that if one gives up a Shari’ah law about blasphemy or alimony, or even a customary religious practice such as purdah, that one is ceasing to be a Muslim altogether is an egregious misrepresentation of what it takes to be a Muslim ... who have altogether shed these offending convictions and

⁴⁸¹ Op. cit. Fadel, 2002; op. cit. Goldberg, 2002, p.41.

⁴⁸² Ayubi, N., 1991. *Political Islam: Religion and Politics in the Arab World*. New York: Routledge.

⁴⁸³ Council of Europe. Multiple discrimination against Muslim Women in Europe: for equal rights. Doc. 12973, June, 2012.

⁴⁸⁴ Article 10 of the European Convention on Human Rights.

⁴⁸⁵ Article 9 of the European Convention on Human Rights and Article 18 of the Universal Declaration of Human Rights.

practices. To say that they don't count as having Muslim identity is to assume a conception that only an absolutist would affirm."⁴⁸⁶

Bilgrami designates them as “‘ordinary’, ‘moderate’ or ‘non-absolutist Muslims’”,⁴⁸⁷ and since these Muslims outnumber the absolutists, the prospect of secularism, soberly understood along these lines, is, in principle, much better than the assertions of smaller groups of absolutists who claim the central seat to voice Islamic fundamental principles. The defensive feelings of resentment from Muslims⁴⁸⁸ who have opted to live in secular states and are being restricted from taking advantage of scientific reproductive procedures to alleviate their sufferings, is noticeable.

Amongst Islamic religious scholars there are those who can neither be classed as secular modernist nor defined as pro-traditionalists. They somehow present as supporters of harmony, peace and enlightenment between religion and secularism, which is contrary to the intellectual traditionalists who seem to be adamant that Islam does not favour secularism. In fact, “traditional jurists reject law reform as heretical innovations inspired by Western examples that would lead to decadence, immorality and the destruction of the family”.⁴⁸⁹ Recent modern reproductive technologies do not carry their support.

Conversely, the interpretation of allegorical verses of the Qur'an through *ijtihad*, *qiyas* and analogies had seldom encountered an application which has not been monitored through Shari'ah law. The early religious disciplinarians of Islam can be categorised as unnecessarily coercive in their interpretations of the allegorical verses of Qur'an, particularly when they believed that infertile Muslim couples were influenced by secularism in fulfilling their aspiration to have a child. It cannot

⁴⁸⁶ Bilgrami, A., 2003. The Clash within civilisations. *Daedalus*, 132 (3): 88-93.

⁴⁸⁷ Ibid.

⁴⁸⁸ Ibid.

⁴⁸⁹ Mayer, A. E., 1987. Law and Religion in the Middle East. *American Journal of Comparative Law*, 35 (1): 127-184.

remain from casting profound misgivings and doubts through unwarranted interpretations of old Islamic established ways of thinking and living.⁴⁹⁰

In Islam, secularism attained recognition during the reign of the Umayyad dynasty when governing the Muslim community. The Umayyad caliphs when they attained political eminence started making decisions of a political nature, subservient to the Islamic framework but under a different style of ruling system which carried ‘a large measure of religious prestige’.⁴⁹¹ After the reign of the Umayyad dynasty, Islamic religious scholars defensively started re-interpreting the allegorical verses of the Qur’an by imposing different values. For example, women’s liberation and rights, the doctrine of lineage, and issues concerning infertility and adoption were interpreted with a hard set of rules.

According to Umayyad caliphs, neither autocracy was under the direct rule of theocracy, nor autocracy vested absolute power to the Islamic rulers. Certain levels of flexibility were, however, permissible and were implemented to maintain the systems of running the government in accordance with the Islamic tenets and allegorical verses of the Qur’an. These were broadly interpreted, lending some comparisons with secularism to be ethically considered or adjudicated to become part of the traditional cultural systems.

According to Fazlur Rahman, “This fact must be borne in mind because it explains why it became difficult for the formal traditionalist at the turn of the century and for subsequent generations to disentangle the strictly Prophetic element from the alleged dicta and facta of the Companions”;⁴⁹² especially when the Islamic state rulers designated muftis to give verdicts which were in the form of *fatwas*, and the main emphasis always remained ‘faith-in-action’.⁴⁹³ Besides reiterating the core principles of Islam, these *fatwas* have not achieved the precedent of unanimous universal acceptance.

⁴⁹⁰ Casanova, J., 1994. *Public Religions in the Modern World*. Chicago, IL: University of Chicago Press.

⁴⁹¹ Op. cit. Rahman, 1979, p.3.

⁴⁹² Ibid. p.58.

⁴⁹³ Ibid. p.81.

On the question of *fatwas*, Prof. Tariq Ramadan argues that:

“Many questions have been raised in the course of history about the diversity of *fatwas*. If Islam is one, how could there be differing legal judgements on the same legal question? The ulama have unanimously affirmed that if geographical or historical contexts differ, it is no longer the same question, for it must be considered in the light of a new environment. Thus properly considered responses should naturally differ, as is shown by the example of al-Shafi, who modified some of his legal judgements after travelling from Baghdad to Cairo. So, even though Islam is one, the *fatwas*, with all their diversity, and sometimes contradiction, still remain Islamic and authoritative.”⁴⁹⁴

However, *fatwas* as such remain theologically a weak ordination, and as argued earlier, they do not create any precedent in Islamic law, nor do they become automatically relevant for an adjacent Islamic state; in fact, *fatwas* are rather contextual.

Fatwas, therefore, become an elementary proposition that Islamic religious scholars can easily avoid, resolving discussions by adhering to their respective responsibilities. Although the criterion of diversity can mutually be appraised, understood and respected, it nevertheless raises two basic points to which Ramadan draws attention. Firstly, the fundamental Islamic *usul* remains constant and carries Islamic religious scholars’ unanimity over *usul fiqah*, even if it may be impossible to avoid difference of opinion on points related to secondary issues, *furu*.

“The natural diversity in their levels of competence inevitably gives rise to divergent interpretations and opinions. This even happened among the Companions at the time of the Prophet, and, according to the ulama, such divergences should be recognised and respected, within their limit, as based upon the fundamentals of Islam.”⁴⁹⁵

⁴⁹⁴ Op. cit. Ramadan, 2006, p.85.

⁴⁹⁵ Ibid.

Secondly, even if the discussions lead to a common issue, it does not mean that all the *fatwas* have the same values, and therefore these are all correct. “If that were the case, it would lead to the conclusion that two divergent opinions could both be true at the same time, in the same place, and in respect of the same person, which is rationally unacceptable.”⁴⁹⁶ Therefore, in Iran, it is Ayatollah Khomeini’s *fatwa* to accept the medical procedures of ovum transfer or egg donation and this may not be binding in other Islamic states.

Sachedina has predicted that:

“In the absence of an organised ‘Church’ and ordained ‘clergy’ in Islam, the determination of valid religious practice, and hence the resolution of bioethical issues, is left to qualified scholars of religious law,^[497] who are called upon to provide rulings in the form of *fatwas* whether a proposed action is forbidden, discouraged, neutral, recommended or obligatory.”⁴⁹⁸

Such *fatwas* are usually issued by religious scholars considering the conditions within an Islamic state. Arguably, with the changing times there is a need to broaden Islamic ethical and bioethics systems to take account of the particular circumstances under which Muslims are living in secular societies, ‘and varying degrees of observance of traditional Muslim beliefs and practices’.⁴⁹⁹

The prospect of secularism revealed different encroachments adopted by various states. For example, the Turkish Republic established carefully devised systems of secularism in place of strict religious tenets to give birth to a modern nation, in full cognisance of the prevailing lack of unanimity on the principles of women’s rights, infertility, lineage and adoption amongst Muslim states. This led to changes being

⁴⁹⁶ Ibid. p.86.

⁴⁹⁷ Sachedina, A., 1995. ‘Islam’. In: W. T. Reich, ed., *Encyclopaedia of Bioethics*, New York: Simon and Schuster/Prentice Hall International.

⁴⁹⁸ Daar, S. A. and Khitamy, A., 2001. Bioethics for clinicians: 21. Islamic bioethics. *Canadian Medical Association Review*, 164: 60-63.

⁴⁹⁹ Ibid.

made, during and after the Second World War.⁵⁰⁰ A similarity can also be drawn in 1902, when the French Radical Party issued an election programme proposing that:

“By suppressing religious orders, by secularising ecclesiastical property in mortmain, and by abolishing payment of public money to the clergy, we mean to put into practice these decisive liberal formula-free churches in a free and sovereign state.”⁵⁰¹

During the past few decades secularism has been successful in virtually every Catholic state. Its casting influence is also evident in some Muslim states that are desirous of consolidating a religion and politics system in a novel combination rather than in the existing traditional ways.⁵⁰²

In Turkey, a meaningful impetus of secularism was pursued by Ataturk: it granted women equal rights, lifted the restrictions on veiling and set the pattern for renunciation of Islamic justification for laws and institutions.⁵⁰³ Somehow, Ataturk did not succeed in reinterpreting or reviewing the Shari’ah laws, i.e. death by stoning due to the accusation of adultery or cutting off hands after committing theft. The Turkish advancement also fell short of deliberating upon the severity of the strict principle of lineage and difficulties faced by infertile couples. Human reproduction established through scientific innovative procedures was not on the horizon at that time.

Through adaptation of secular principles in society, Turkey soon became an example for the other Muslim states such as Iran during the Pahlavi period.^{504, 505} Arab

⁵⁰⁰ Yavuz, M. H., 1997. Political Islam and the Welfare (Rafah) Party in Turkey. *Comparative Politics*, 30 (1): 63-82. Cited in Keddie, 2003.

⁵⁰¹ Faquet, E., 1903. *Le Liberalisme*. Paris: Societe Francaise d’Imprimerie. Cited in Keddie, 2003.

⁵⁰² Roy, O., 1994. *The Failure of Political Islam*. Trans. Carol Volk, Cambridge, MA: Harvard University Press; Kepel, G., 2002. *The Trail of Political Islam*. Cambridge, MA: Harvard University Press. The trend of moderation of Iran’s policies since the 1978-1979 revolution and the early loss of Muslim faith in Iran as a model for revolution elsewhere are relevant, and are also discussed by Keddie, 2003.

⁵⁰³ Op. cit. Keddie, 2003, p.16.

⁵⁰⁴ Op. cit. Yavuz, 1997; Crescilius, D., 1983. Nonideological Responses of Egyptian Ulama to Modernisation. In: N. Keddie, ed., *Sufis, Saints and Scholars*. Berkeley, CA: University of California Press.

nationalist regimes in Indonesia, Malaysia, and Pakistan, all to varying degrees, tried to emulate the Turkish model.⁵⁰⁶ Later on, some of the states, including Malaysia, Morocco, and Pakistan, fostered a challenge to secularism and religion became the centre of gravity between state and society, posing the main source of resistance towards secularism.⁵⁰⁷

In contrast, Western secular societies brought about scientific enlightenments in various fields of industrial development, resulting in the era of the Renaissance. Modern reproductive technologies made successful advances in alleviating the suffering of infertile couples. Western societies managed to survive the uneven spread between secularism and religion,⁵⁰⁸ giving rise to a 'religio-secular world',⁵⁰⁹ which Islamic states were unable to appreciate.

Nikki Keddie enlarges upon the Western prediction by stating that: "Theorists with a progressive view, whether straight-line or dialectical, have also tended to imagine that people will enjoy ever greater levels of material well-being, thus diminishing the collective need for religious consolation."⁵¹⁰ With the intensity of ethical struggles between religions and secularism, it has become difficult for Islamic states to reconcile the differences in the foreseeable future.⁵¹¹

It can be argued that the contextual application of Islamic Shari'ah law is not accepted by various eminent writers on Islam, such as Prof. Serour, who seek an internationally applicable ethical code on assisted reproduction.⁵¹² It can further be

⁵⁰⁵ Chehabi, H. E., 1993. Staging the Emperor's New Clothes: Dress Codes and Nation-Building Under Reza Shah. *Iranian Studies*, 26 (3-4): 209-229.

⁵⁰⁶ Richards, A. and Walesbury, J., 1990. *A Political Economy of the Middle East*. Boulder, CO: Westview Press.

⁵⁰⁷ Malley, R., 1996. *The Call from Algeria: Third Worldism, Revolution, and the Turn to Islam*. Berkeley: University of California Press; Binder, L., 1988. *Islamic Liberalism: A Critique of Development Ideologies*. Chicago, IL: University of Chicago Press.

⁵⁰⁸ Op. cit. Keddie, 2003, p.7.

⁵⁰⁹ Nasr, N., 2003. Lessons from the Muslim world. *Daedalus*, 132 (3): 67-72.

⁵¹⁰ Op. cit. Keddie, 2003, p.14.

⁵¹¹ Op. cit. Ayubi, 1991; op. cit. Enayat, 1982.

⁵¹² Serour, G. I., 1995. *Bioethics in Medically Assisted Conception in the Muslim World*. Paper presented at the IX World Congress on *In Vitro* Fertilisation and Alternate Assisted Reproduction, Vienna.

argued that, since its inception, Shari'ah code⁵¹³ is considered to be the embodiment of the complete will of God and that it governs all areas of Muslim lives: social, economic, political, moral and spiritual. Against this determined view, Asghar Ali Engineer argues that culturally there are many versions of Islam, which have developed in different societies, resulting in different traditions and customs. The process of Shari'ah involves not only the elements of the Qur'an and Sunnah, but also an understanding of their contextual application, which may not be universally agreed. "Muslims are expected to work to establish this as the law of any nation in which they gain dominance – and indeed, throughout the whole world."⁵¹⁴

Muslims, even when residing in a secular society such as the UK, are not permitted to deviate from the *usul* of the four principles, i.e. the Qur'an and Sunnah being religious sources, and *qiyas*, *ijtihad* and *ijma*, as the consensus of the ulamas. According to Imam Al-Ghazzali, there is no basis for deviation unless there is an explicit provision in the Qur'an or Hadith or through an analogy within a given text.⁵¹⁵ For example, any ART contravening these four principles of Islam is categorically discarded as being anti-Islamic and *haram*. Nevertheless, Islamic states such as Saudi Arabia and Indonesia have not rejected assisted human reproduction.⁵¹⁶ The difference becomes more obvious where it involves certain Muslim states⁵¹⁷ who have strictly conformed to Shari'ah law and have declared themselves as an Islamic state. For example, Pakistan is one of those states pledging

⁵¹³ Shari'ah is the main and comprehensive concept of explaining the functions of Islamic law. The literal meaning of the word is the way or track leading to water. It bears comparison with *Din*, meaning submission, total way of life. *Din* is the essence of Shari'ah; in other words, Shari'ah without *Din* is an empty shell and *Din* without Shari'ah obviously cannot exist.

⁵¹⁴ <http://www.glenacres.org/Documents/IslamEvaluated.htm>. p.3 (Accessed 2nd February, 2009). Qur'an 8:73 "And those who disbelieve are protectors one of another – If you do not so, there will be confusion in the land, and great corruption".

⁵¹⁵ Al-Ghazzali, 1320 A. H. *ihya ulum al-Din*. Cairo: Al Matba al-Azhariyya al-Misriya.

⁵¹⁶ Engineer, A. A., 2000a. *Islam and Secularism*. The Institute of Islamic Studies and Centre for Study of Society and Secularism. p.1.

⁵¹⁷ There is no guidance revealed through the Qur'an pertaining to the forming of an Islamic state. It is a historical event where Muslim communities have formed estates. Before Islam came into being there was no state in Mecca or Medina which could have been a precedent to establishing an Islamic state.

allegiance to *usul*, but Serour⁵¹⁸ does not believe that Shari'ah laws are as rigid.⁵¹⁹ He is of the opinion that:

“Even if the action is forbidden, it may be undertaken if the alternative would cause harm. Shari'ah is not rigid. It is flexible enough to adapt to emerging situations in different times and places. It can accommodate different opinions as long as they do not conflict with the spirit of its primary sources and are directed to the benefit of humanity.”⁵²⁰

As it has been observed in the preceding discussions, earlier Shari'ah laws did not make any reference to assisted conception in relation to the significance of marriage and giving rise to family formation and procreation,^{521, 522, 523} and it is only within the last few decades that the unique and rapid advances of assisted reproduction have enabled infertile couples to have their own babies through the application of these procedures. Arguably, therefore, this creates new choices as well as new dilemmas for Muslim couples for which there is no clear guidance in the established Shari'ah law and to use analogies made as in the context of medieval society would be difficult.

⁵¹⁸ Op. cit. Serour, 1995, p.560.

⁵¹⁹ According to Islamic Medical Ethics: The IMANA Perspective of IMANA Ethic Committee confirms that in Islam: “necessity overrides prohibition; that is, if there are certain items which are Islamically prohibited, under dire necessity they can become permissible.”

⁵²⁰ Serour, G. I., 1991. *Research findings on the role of religion in family planning*. Paper presented at the IPPF Regional Conference, Cairo.

⁵²¹ Qur'an, 42:49-50 [Sura Al-Shura] 49 “Unto Allah belongeth the Sovereignty of the heavens and the earth. He createth what He will. He bestoweth female [offspring] upon whom He will, and bestoweth male [offspring] upon whom He will.” 50 “Or He mingleth them, males and females, and He maketh barren whom He will. Lo! He is Knower, Powerful.”

⁵²² Qur'an, 16-72 [Sura Al-Nahl] “And Allah hath given you wives of your own kind, and hath given you, from your wives, sons and grandsons, and hath made provision of good things for you. Is it then in vanity that they believe and in the grace of Allah (Swt) that they disbelieve?”

⁵²³ Qur'an, 13:38 [Sura Al-Ra'd] “And verily We sent messengers [to mankind] before-thee, and We appointed for them wives and offspring, and it was not [given] to any messenger that he should bring a portent save Allah (Swt) leave. For everything there is a time prescribed.”

Chapter Four

Human Reproduction and Modernity in Islam

Modernity is an alienating process, or as Giddens states, it “breaks down the protective framework of the small community and of tradition, replacing these with much larger, impersonal organisations”.⁵²⁴ It reframes the concept of personal identity such that individuals may feel bereft of the security provided by traditional systems. A central feature of modernity is uncertainty. Modern science challenges old certainties, but does not and cannot replace them with new, firmer ground. Consequently, modern medicine considers not simply disease as it is expressed, but also the risk of disease that may or may not be associated with aspects of lifestyle, diet or behaviour, and raises issues about whether these can or should be modified. Preventative medicine could be said to be a feature of modernity. Modernity challenges our view of how the world is and how it should be. This is particularly acute where it challenges religious certainties or the authority of tradition. The challenge is to find ways of living with uncertainty, or for religions to seek to re-establish authority and order. Another feature is that of continuous and increasingly rapid change. The faster the change, the more difficult it becomes for religious thought to provide considered opinion that reflects and is meaningful in relation to the choices people may need to make. This is no different from reproduction, as it increasingly becomes what Giddens refers to as a ‘mechanical phenomenon’.⁵²⁵ This is particularly difficult for religious scholars who have linked the process of reproduction with the will of God and the outcome of the sexual union of two human beings, a husband and wife.

Another key feature of modernity is globalisation and this inevitably brings different traditions into conflict in relation to authority. In this chapter it will be argued that, just as with the response to secularism, developments in reproductive medicine and treatment become entangled in this conflict.

⁵²⁴ Op. cit. Giddens, 1991.

⁵²⁵ Ibid.

Within the framework of modern scientific innovations is the concept of ‘alternative modernities’, a term which goes a long way in representing the diversity of the world in encountering, exposing and assimilating the cultural and intellectual life of some of the civilisations of the world.⁵²⁶ Although modernity over a short time span has caused Islamic religious scholars to contemplate new ways of keeping abreast of modern scientific developments, it has not resulted in rewriting or abandoning Shari’ah laws. The challenge faced by Islamic religious scholars is how to confront the new realities with wisdom and balance, while remaining faithful to their religious traditions.⁵²⁷ There is no evidence suggesting that Islamic Shari’ah law cannot adjust to these changes, but it becomes difficult if, in response to modernity, religion seeks to consolidate and harden existing law.

The key building blocks of modernity were developed primarily in Eurocentric terms and are embedded in European secular cultures and traditions. As a result, these tend not to define any other modernity.⁵²⁸ Through secularism, the Western hemisphere has provided specific conditions for this to happen.⁵²⁹ Particular cognitive and societal transformations, motivation in consistent scientific progress and the primacy of rationality and individualism⁵³⁰ were the main features of its successful establishment. Marx, Durkheim and Weber all gave unbounded assurance that the cultural modernity of Europe would prevail all over the world through the expansion of modernity itself.⁵³¹ This “autocentric picture of itself as the expression of universal certainty” has been defined as one major feature of modernity.⁵³²

In the beginning, religions and sciences were as one in their ethical, social and moral pursuits. Over time, due to new scientific discoveries and a lack of genuine and

⁵²⁶ Shaykh, A. G., 2010. *Grand Mufti of Egypt*. Available at: blogs.nd.edu/contendingmodernities/2010/11/.../islam-and-modernity.

⁵²⁷ Ibid.

⁵²⁸ Khundmiri A., 2001. A critical examination of Islamic traditionalism with reference to the demands of modernization. In: A. Khundmiri, ed., *Secularism, Islam and Modernity*. Sage. p.46.

⁵²⁹ Masud, M. H., Salvatore, A. and Van Bruinessen, A., 2009. *Islam and Modernity*. Edinburgh: Edinburgh University Press, p.31.

⁵³⁰ Gaonkar, D. P., 1999. On Alternative Modernities. *Public Culture*, 11 (1): 1-18. p.2.

⁵³¹ Eisenstadt, S. N., 2000. Multiple Modernities. *Dedalus*, 129: 1-29.

⁵³² Mitchell, T., 2000. *Questions of Modernity*. University of Minnesota Press. p.XI.

timely co-operation from theologians, science developed unilaterally, and so the gap between religion and science grew wider. With the advent of modernity, the problem for Islamic religious scholars became even more compounded. “The fragile socio-economic status of the contemporary Muslim world had led to the erosion of its confidence, making Muslim intellectuals quite vulnerable to the influences and challenges posed by the rise of modernity.”⁵³³ Some radical Islamic scholars spend endless amounts of time arguing over the intricacies of Shari’ah law, “the most contentious issue in Islam’s encounter with modernity”;⁵³⁴ but their response to the challenges posed by modern human reproductive technologies remain reactive ones. They thus became a great hindrance to addressing and resolving the infertility issues amicably and intelligently.⁵³⁵ However, these issues may not be adjusted by simply ignoring the prospects of advancements in innovative scientific fields or by adopting a defensive attitude of isolationism. Against radical Islamic scholars, traditionalist Muslims acknowledge steer a path of ‘comprehensive rationality’⁵³⁶ and take account of the new forms of knowledge and advancement emanating in ethical human reproductive social sciences more seriously.⁵³⁷

The unprecedented successes in social sciences are beginning to convince and persuade discussions in many fields of human religious beliefs and convictions. Successes in human reproductive technologies have completely reshaped the academic world of scientific professionals in this field. Infertile Muslim couples living in secular modern societies may gravitate towards such issues and may reluctantly align themselves in order to compromise with the dichotomies presented by reproductive treatments. Although modernity primarily rests on a simple notion of flux, or change, it nevertheless offers three choices: firstly, to keep adjusting religious beliefs and convictions with the ever-changing realities of the modern

⁵³³ Naquib, S. M., 1994. *Islam and the Challenge of Modernity: Historical and Contemporary Contexts*. *Institute of Islamic Thought and Civilisation*.

⁵³⁴ Jeschke, M., 2010. *Islam: The Trauma of Modernity*. Available at: dialogueireland.wordpress.com/.../islam-the-trauma-of-modernity-by-marlin-jeschke.

⁵³⁵ Soroush, A., 2003. *The Responsibilities of the Muslim Intellectual in the 21st Century*. Available at: www.dr.soroush.com.

⁵³⁶ Op. cit. Naquib, 1994.

⁵³⁷ Op. cit. Tibi, 2002.

world; secondly, to hold them against modern changes; and thirdly, not to change or compromise them at all. As modernity remains subservient under the influence of constantly improving scientific research, it invites a difficult enquiry from Islamic religious scholars as how to deliberate on the culturally innovative specific phenomenon of modern scientific successes and under what assurance these will remain consistent.

From the beginning religious guidance from Islamic scholars to their followers has basically been through the interpretation of divine ordinations. Successes of modern scientific innovations are a newly discovered threshold. For example, freezing sperm and embryos, and fertilisation of these outside the womb of a mother are modern scientific developments. Due to their non-existence in the early history of Islam, Islamic religious scholars are hesitant to align themselves with existing interpretations of cultural traditions. Besides, the mother may not know the identity of the sperm donor and will give birth to a child who potentially will also not know his/her father. Such divergent modern scientific discoveries strike at the very heart of religious teachings and remain independent of religious beliefs and convictions. It is, therefore, the lack of mutual understanding between religions and sciences which creates a non-harmonious atmosphere.

Modernity, basically the product of enlightenment, came into being in Europe during the beginning of the 18th century.⁵³⁸ In fact, all the histories of modernity posit as defining a moment of rapture and differences in history.⁵³⁹ Anthony Giddens elaborates the point by stating that, although modernity is associated with Western history, it has nevertheless extracted itself from Western history and has become a global phenomenon.⁵⁴⁰

⁵³⁸ Modernity was mostly led by Western philosophers such as Kant, Hegel and Baudelaire.

⁵³⁹ Bhambra, G. K., 2007. *Rethinking Modernity*. New York: Palgrave.

⁵⁴⁰ Delanty, G., 1999. *Social theory in a changing world: conceptions of Modernity*. Cambridge: Polity Press.

In contrast to such a theory, a prominent voice in Western academia is Charles Taylor, who holds the view that certain features of “modernity” are also universal.⁵⁴¹ It is on account “of the differences as one between civilisation, each other with their own cultures”, i.e. the plurality of human culture, languages and religious practices defining specific understanding of the social backgrounds.⁵⁴² Consequently, modernity is not a rationale but rather “a movement from one constellation of background understanding to another”.⁵⁴³ Such ideas, in Taylor’s opinion, leads to the misunderstanding of modernity when distinguished between the disguises peculiar to universally workable Western modernities, and the narrow focus of those modernities which are associated with Western canons only. This he defines as ‘A-Cultural Modernity’.⁵⁴⁴ It can, nevertheless, be argued that modernity is a complex and multidimensional phenomenon with both good and bad characteristics and potentialities, and, according to MacIntyre, not maintaining a coherent unity.⁵⁴⁵

Professor Tibi’s uncritical adherence to modernity affirms that it was never meant to be cultural bias, and aberrations, especially Islamic ones, need not be reconstituted. Islam is a cultural system and a civilisation without any given political dimension.⁵⁴⁶ Islam is a faith and a culture, not a political idea, containing highly problematic compartmentalisation of religious beliefs and convictions. It is becoming difficult for religions firstly to accept modern human reproductive technologies which were then unknown, and secondly to squeeze them all into their existing religious beliefs and convictions at one stab. Modernity, behind the veil of secularism, is advocating an implied retrenchment of religious morals and ethical values, which so far have been recognised but proved incompatible with some forms of religious civilisation.

Basically, religions are not rigid and immutable; they adapt or shrivel, or mutate into other forms, and there is no reason why Islam should prove different. There is

⁵⁴¹ Taylor, Charles. ‘Nationalism and Modernity’ in *Theorising Nationalism*, ed. Roland Beiner, (1999). Albany: University of New York Press.

⁵⁴² Taylor, C., 1995. Two Theories of Modernity. *The Hastings Centre Report*, 25 (2): 24-33.

⁵⁴³ Ibid.

⁵⁴⁴ Ibid.

⁵⁴⁵ MacIntyre, A., 1998. *After virtue: A Study in Moral Theory*. University of Notre Dame Press.

⁵⁴⁶ Op. cit. Tibi, 2002, pp.3, 29, 118.

nothing in the Qur'an that suggests that Islam is less open to democracy or equality of the sexes than either Christianity or Judaism; nor is there any inherent reason why Islam should prove less able to accept the challenge of changes.⁵⁴⁷ Through the principle of *ijtihad*, reasoning, it is entirely possible that it can formulate an alternative and effective theory of modernity that integrates faith into a more realistic theory than the largely secular Western model.

At the root of any religion are its great and good ideals. It is the interpretations and implementations of a narrow set of ideals that serves the purpose of power for those who are greedy and who constantly exploit, pervert and convolute its perceptive values. According to Gamal Al-Banna,⁵⁴⁸ religious opinions made over 1000 years ago cannot be valid for all time. An Islamic level of openness would require a larger degree of reasoning and reviewing of the benefits of modern scientific innovations, otherwise the differential gaps will continue to widen and Islam will not be able to accommodate itself in the modern world. Gamal Al-Banna is quite clear in his assertion that Muslims should stop relying on scholars to interpret Islamic tenets for them.⁵⁴⁹ Instead, he says that Muslims should read the Qur'an directly, keeping in mind its emphasis on knowledge and wisdom.⁵⁵⁰ The Qur'anic verse explains that: "It was revealed to them, the Qur'an and wisdom".⁵⁵¹ Gamal Al-Banna is firmly of the view that the search for wisdom has proven itself to be a successful experiment for all people and all times. Muslims have to adapt and to learn from all other experiences with wisdom so that Islam is not a closed box, but it is an open window

⁵⁴⁷ Moaddel, M., 2002. The Study of Islamic Culture and Politics: An Overview and Assessment. *Annual Review of Sociology*, 28: 359-386.

⁵⁴⁸ *Religion & Ethics*. New Weekly. August, 2009. www.pbs.org/wnet/religionandethics/...7.../islam-and-modernity/1880/ (Accessed 21st September, 2011).

⁵⁴⁹ One well-known personality in Islamic history was the famous scholar of Medina in the 2nd Islamic century, Malik bin Anas. Imam Malik was a great advocate of free thought, even in the face of persecution. When he was approached by the Caliph of the time with a proposal to make his entire dominion subject to the rulings in Malik's famous *Muwatta*, Malik refused, saying, "Leave the people of each locality to themselves and what they have chosen." With this simple statement, Imam Malik set a precedent for intellectual and legal diversity in the Islamic world, leading to a vibrant culture of scholarship and tolerance throughout the centuries.

⁵⁵⁰ *Religion & Ethics*. New Weekly. August, 2009. www.pbs.org/wnet/religionandethics/...7.../islam-and-modernity/1880/.

⁵⁵¹ Qur'an 2:231.

to the world.⁵⁵² “This is not to say that the readings and interpretations of the past were not important or relevant. They were – but that is precisely the point. Their relevance lies in the past, in the pre-modern age, but not now.”^{553, 554} Instead, the relationship between Islam and modern human reproductive technologies is ever more relevant, and it requires a deeper understanding of the secular West, Islam and modernity.⁵⁵⁵

In the Islamic world, the first modernist idea of political reform was voiced by Jamal al-Din al-Afghani.⁵⁵⁶ He advocated two salient elements of reasoning in relation to his political thought: a) the unity of the Muslim populism, meaning the doctrine of the Islamic political unification in the Modern world, known as pan-Islamism;⁵⁵⁷ and b) the populist impulse directed through recognised intrinsic justice, issued directly from the constitutional government which is strong, stable and real. What al-Afghani means is that these political rules are independent of clerics’ interpretation and are separate from religious involvement.

In relation to modern sciences, MacIntyre, in his book *After Virtue*, reveals a bleak view of the state of modern ethical and moral discourse, describing it as a refutation of emotivism of moral philosophy. The opening sentence of the book, “Imagine that the natural sciences were to suffer the effect of catastrophe”, is similar to delivering a body blow to modern innovative reproductive technologies and other similar inventions providing greater knowledge and comfort. It is one of the arguments of this thesis that modernity has opened the doors to providing advanced knowledge to the masses of cultures, means of lengthening human life and providing innovative procedures of human reproductive technologies for infertile couples. However, modernity is not a unified phenomenon or idea, either.

⁵⁵² Al-Banna, Gamal. www.pbs.org/wnet/.../august...2009/islam-and-modernity/1880.

⁵⁵³ Op. cit. Soroush, 2003.

⁵⁵⁴ Op. cit. Tibi, 2002.

⁵⁵⁵ Fukuyama, F., 1992. *End of History and the Last Man*. Avon Books.

⁵⁵⁶ Op. cit. Rahman, 1979, p.226.

⁵⁵⁷ The term pan-Islamism denotes the intellectual and institutional trends toward Islamic unity which emerged among Muslim peoples, starting in the mid-19th century and continuing throughout the 20th century.

The cultural despair is depicted by MacIntyre in the form of a nostalgic yarn for the lost innocence to which the world cannot turn back the clock. Humanity has arrived at the modern age and has thus become part of it.

“However, MacIntyre’s proposal has never been for us even to attempt to move back to pre-modern, non-individualist society. He clearly does not claim that all of modernity is to be discarded. He has instead suggested what alternative process would be necessary for a new, non-individualist society of the future to take shape.”⁵⁵⁸

The onward march bringing changes to the modern world in the shape of televisions, automobiles, airplanes, mobile phones, computers, medicine and agricultural equipment are consistent waves of modernising human existence. It would be wrong to admit that modernity was not right in abolishing slavery or in its efforts to mitigate the oppression of women. If anything, modernity has contributed to casting away some of the doctrines which were becoming outdated and has replaced these with more useful, beneficial, and valuable proprietaries, through advanced knowledge and scientific research. Modern human reproductive technologies perhaps rank amongst some of the most invaluable discoveries, i.e. to relieve the sufferings of infertile couples through these developments. It is difficult to agree with MacIntyre’s modernity arguments, especially in light of modern reproductive technologies, as these are neither formed from one man’s opinion nor are they conceived via a forum of inexplicably subjective inventions as advancements in modern science.

In the subsequent part of his book, MacIntyre confesses that:

“A key part of my thesis has been that modern moral utterance and practice can only be understood as a series of fragmented survivals from an older past and that the insoluble problems which they have generated for modern moral theories will remain insoluble until this is well understood. If the deontological character of moral judgement is the ghost of conceptions of divine law which

⁵⁵⁸ Pinkard, T., 2003. *MacIntyre’s Critique of Modernity*. Ed. Alasdair MacIntyre (Contemporary Philosophy in Focus). Mark Murphy. p.181.

are quite alien to the metaphysics of modernity, and if the teleological character is similarly the ghost of conceptions of human nature and activity which are equally not at home in the modern world, we should expect the problems of understanding and of assigning an intelligible status to moral judgements both continually to arise and as continually to prove inhospitable to philosophic solutions.”⁵⁵⁹

Terry Pinkard picks up the importance of the “individual” in relation to modernity, either through religious ordinations or cultural traditional systems, and states that they cannot be taken as the ultimate, irreducible unit of political and social discourse of the modern society. This is because the “individual” does not acquire his rights prior to his relationship with other individuals and the status of institutions are not solely to provide “individuals” with the means for efficiency for their unilateral desires of “actualising” their “selves”.⁵⁶⁰ At the same time, if the Islamic traditionalists choose to remain indifferent through their increasingly defensive approach to human reproductive modernity and if the Muslim ‘individuals’ who opt to remain insensitive to ethically advanced modern developments, then the chances are that they will gradually lose their opportunities and deprive themselves of attaining betterment in life through prosperity and private satisfaction.⁵⁶¹ Unfortunately, this trend of thinking by Islamic religious scholars has not changed very much.⁵⁶²

It is disappointing that MacIntyre regards modernity as failing to be rational without giving an adequate explanation as to how it is irrational. He poses, as if standing back from the entire world’s communities, maintaining an uncommitted distance, and presents mostly an objective account of modernity’s moral self-destruction. In the end, his arguments seem to become hollow, in a descriptive but not in a dismissive sense. He anchors his belief that the older forms of ethical and moral discourse were better, particularly when comparing them with Aristotle’s moral

⁵⁵⁹ Op. cit. MacIntyre, 1998, pp.110-111.

⁵⁶⁰ Op. cit. Pinkard, 2003.

⁵⁶¹ Ibid.

⁵⁶² Op. cit. Soroush, 2003.

philosophy,⁵⁶³ and states that: “The hypothesis which I wish to advance is that in the actual world which we inhabit the language and morality is in the same state of grave disorder as the language of natural science in the imaginary world which I described.”⁵⁶⁴ He concludes his argument by stating that: “If a premodern view of morals and politics is to be vindicated against modernity, it will be in something like Aristotelian terms or not at all.”⁵⁶⁵

He further argues that moral structures which emerge from the Enlightenment are philosophically doomed because these are described in natural sciences in incoherent moral language. In pursuance of his argument, he invites support from the works of many significant Enlightenment and post-Enlightenment moral philosophers, such as Kiekegaard, Marx, Kant and Hume. These philosophers, in his opinion, “fail because of certain shared characteristics deriving from their highly historical background”.⁵⁶⁶ He further states that:

“All [these philosophers] reject any teleological view of human nature, any view of man as having an essence which defines his true end. But to understand this is to understand why their project of finding a basis for morality had to fail.”⁵⁶⁷

His whole reliance is on the teleological idea that human life is for a purpose and it could not accomplish the natural end without completing his/her course of preparation for it. For this, human beings have to enquire and comprehend who they are and where they come from. To establish their beliefs of Enlightenment on such an incomplete structure, the philosophers, in his opinion, were doomed from the beginning.⁵⁶⁸ MacIntyre firmly believes that ethics plays a significant part in making

⁵⁶³ Aristotelian philosophy developed over centuries so that the indispensable role for virtue is the internal good of the community, sustaining individuals in their pursuit for ‘good’, like the telos. It is only possible by being a member of the community in the context of moral pursuit of proper development and growth.

⁵⁶⁴ Op. cit. MacIntyre, 1998, p.2.

⁵⁶⁵ Ibid. p.118.

⁵⁶⁶ Ibid. p.51.

⁵⁶⁷ Ibid. p.54.

⁵⁶⁸ MacIntyre, 1998, cites an example of King Kamehameha II, who removed the taboos of the people in order to modernise their society and met with little if any resistance. The Polynesians had no issue

man realise his transitory passage of life from “man-as-he-happens-to-be” to “man-as-he-could-be-if-he-realised-his-essential-Nature”.⁵⁶⁹ He submits that: “the construction of local forms of community within which civility and the intellectual and moral life can be sustained through the new dark ages which are already upon us”.⁵⁷⁰

Neither is it possible to concur with his affirmations and approbations of Nietzsche, whom he refers to as “King Kamekameha II of the European tradition”, who found no good in the world, but in his own tables of virtues.⁵⁷¹ It is also difficult to pinpoint Nietzsche’s ‘virtues’ in relation to modern developments of human existence. However, MacIntyre admits that his book does not advance sufficient reasons to justify grounds for definitive answers for present-day modernity.

George Scialabba finds that the concluding arguments advanced in *After Virtue* are ‘faltering’ in a sense as to what virtuous life should be in the present-day conditions of modernity.⁵⁷² In the present-day environment of ethical reproductive innovative advancement, Scialabba finds it difficult to fit in MacIntyre’s claim that the good life of human beings consists of contemplating the good life for human beings. This is, if nothing else, insufficient and anticlimactic, or perhaps a moral utterance of his own preference and feelings, which are frustrating as being insoluble. MacIntyre’s insistence of such a nature is not supported with any discussion as to how community life can be reconciled with the critical spirit, which in the opinion of Scialabba is one of the great achievements of modernity.

Islamic religious scholars argue that: “the efforts of the ulama to safeguard the discursive structure of Islam both from external attacks and internal disruption were the factor that helped Islam to retain its cohesiveness and coherence over the

with abandoning their long-standing cultural traditions, as these had been shorn over centuries, explaining their spiritual and didactic purpose and had become a set of arbitrary prohibitions.

⁵⁶⁹ Op. cit. MacIntyre, 1998, p.53.

⁵⁷⁰ Ibid. p.263.

⁵⁷¹ Ibid. p.257.

⁵⁷² Scialabba, G., review of MacIntyre, 1998. Available at: <http://www.georgescialabba.net/archive/000226.php> (Accessed 26th May, 2011).

centuries.”⁵⁷³ According to Abdolkarim Soroush, “they were also the ones who shut the doors of *ijtihad* and thus brought to an untimely end the tradition of critical thinking of Islam”.⁵⁷⁴ However, the relationship between Islam and modernity⁵⁷⁵ became a cause of tension through Western experiences, giving rise to voluntary or involuntary dialogues between different cultures. Neither Islam nor modernity is monolithic; both are open to question. In the case of modernity, it is fair to argue that it is “neither innocent nor is it culture-blind. It is as objective as it claims to be.”⁵⁷⁶ Modernity, highlighting significant new scientific human reproductive technologies, and through its acquired knowledge has attained a place in cultural societies. Thus, the notion of modernity⁵⁷⁷ has started to encircle the concept of being modern;⁵⁷⁸ in the form of what to change, and how much change is justifiable. It is therefore when discussing modernity in relation to human reproductive technologies for infertile Muslim couples that Islamic religious scholars realise that they are not immune to these paradoxes and contradictions.

Modern reproductive technologies have become ground-breaking scientific advancements. The endeavours to explore the ethical relationship, especially between Islam and various fields of modern scientific medical ethics, cannot easily be ignored. To date, topics such as lineage, self identity,⁵⁷⁹ genetic engineering, gene therapy and assisted reproduction, are strictly part of spiritual guidance, whereas under modern developments in human reproductive technology, these can easily be categorised as social issues within existing traditions. These developments challenge our understanding of identity and sense of belonging. In trying to address these

⁵⁷³ Op. cit. Soroush, 2003.

⁵⁷⁴ Ibid.

⁵⁷⁵ The recent encounter of Islam with modernity is not its first. The early conquest of Islam of Byzantine and Persia was a case of Bedouin Arabs encountering culture and civilisation.

⁵⁷⁶ Op. cit. Soroush, 2003.

⁵⁷⁷ Haitham, Sheikh. www.islam21c.com/islamic.../121-islam-and-the-problems-of-modernity.

⁵⁷⁸ To be modern is to be constantly looking to the future and to be innovating in all spheres of life.

⁵⁷⁹ According to Giddens, 1991, “A person’s identity is not to be found in behaviour, nor – important though this is – in the reactions of others, but in the capacity *to keep a particular narrative going*.” p.54. Again, at page 74, Giddens states that: “the search of self-identity is a modern problem, perhaps having its origins in Western individualism”. In the medieval period, lineage, gender, social status and other attributes relevant to identity were all relatively fixed.

ethical problems, it is necessary for Islamic religious scholars to review and respond to these contemporary challenges.

Modern traditions, of course, cannot remain homogeneous when furnishing humanity with modern ends, such as the modern notion of human rights, autonomous happiness, wellbeing and prosperity. The modern language of ‘rights’ is completely different from the language of traditionalist Islamic scholars. Their interpretations are predominantly tyrannical, based on obligations and duties before ‘rights’, depicting a crucial way of defending past traditions within the modern age. “This is not to say that the readings and interpretations of the past were not important or relevant. They were – but that is precisely the point. Their relevance lies in the past, in the pre-modern age, but not now.”^{580, 581}

Infertile Muslim couples may seek recourse in reasoning out their predicaments by making religion part of the Islamic identity process under the influence of the modern age. Old traditional ideas when clashing with the modern age may feel to be rupturing, but the new traditional environment may radically change the way of looking at them. There are instances where old traditional ideas may not conform to modern thinking; for example, the adultery penalty of death by stoning, and the cutting off of hands for petty theft, are outdated penalties. It is one of the distinctive features of modernity in relation to assisted reproduction that it is attractive to infertile couples for its beneficial procedures. While it has become a great possibility for alleviating infertility, it nevertheless still creates new risk parameters for traditionalist thinkers of preceding Islamic generations.

According to Zaide Dalia, the principles of modernity within the premises of universality accepts people’s right of security, their rights to freedom and to reason, and the deliberate division of politics and faith, in other words mosque and state,⁵⁸² whilst always appreciating that the core principles of Islam will never change. “Modernity is something linked with time, and Islam is timeless.”⁵⁸³ Like Islam,

⁵⁸⁰ Op. cit. Soroush, 2003.

⁵⁸¹ Op. cit. Tibi, 2002.

⁵⁸² Zaide, D. www.pbs.org/wnet/.../august...2009/islam-and-modernity/1880.

⁵⁸³ Haiba, A. www.pbs.org/wnet/.../august...2009/islam-and-modernity/1880.

modernity has moved in many directions and has evolved with manifold consequences; for example, modern reproductive technologies which have furnished us with new ways of looking at the predicaments of infertile Muslim couples. It has provided entrenched biases and prejudices described as both unethical and irrational.

In modern social life the predicament of infertility is no less important than the elements of other social choices of life planning, such as self-identity and genetic engineering, etc. The awareness of such issues exemplifies the mixed attitudes of reverence and reserve, approval and disquiet, enthusiasm and antipathy. One of these ethical approaches can impel infertile Muslim couples to seek further religious guidance, before benefiting from such procedures, as they cannot pretend to be unaware of the scientific achievements of the modern era against past historical developments.

While appreciating that the core principles of Islam are also indivisible, at the same time the religious opinions formed during early Islam cannot remain valid for posterity. Unless Islam has recourse to rational understanding, it will not be able to accommodate itself in the modern world,⁵⁸⁴ and infertile Muslim couples will not benefit fully from the opportunities afforded to them by modern innovative reproductive sciences.

Similarly, bioethics sciences, genetic engineering improvement and the acceleration of modern medical technologies are becoming a modern-day phenomenon of choices, options or rejections; 'the social systems of modernity'.⁵⁸⁵ "Reproductive technologies and genetic engineering, for example, are parts of more general processes of the transmutation of Nature into a field of human action."⁵⁸⁶ The notion of modernity in the sphere of modern human reproductive science cannot be free from ethics or morality. For example, not to avail oneself of the opportunities provided by modern sciences in terms of the day-to-day fulfilment of human existence is a symbol of denial towards having a satisfactory existence. It can then be

⁵⁸⁴ Al-Banna, Gamal. www.pbs.org/wnet/.../august...2009/islam-and-modernity/1880.

⁵⁸⁵ Op. cit. Giddens, 1994, p.8.

⁵⁸⁶ Ibid.

described as “Existential Isolation”.⁵⁸⁷ Genuine pursuits can enable individuals to ‘strengthen intimate relationships far beyond earlier capacities’.⁵⁸⁸

It is perhaps appropriate to state that modern reproductive technology has become part of modern ethical science. From Giddens’ point of view:

“Science depends, not on the inductive accumulation of proofs, but on the methodological principles of clearing doubt. No matter how cherished and apparently well established a given scientific tenet might be, it is open to revision – or might have to be discarded altogether, in the light of new ideas or findings.”⁵⁸⁹

Besides, for modern reproductive technologies to be universally accepted and to become subject of a rational order is not a valid argument as far as Islam is concerned. This is being critically analysed and narrowly focused on by Islamic religious scholars. According to Bayman, when modernity is narrowly focused it “is liable to produce unintended and unforeseen outcomes which cannot be continued – save for the development of further expertise, thereby repeating the same phenomenon”.⁵⁹⁰ Giddens puts it in a different way by asserting that: “Expert knowledge does not create stable inductive arenas; new, intrinsically erratic situations and events are the inevitable outcome of the extension of abstract systems.”⁵⁹¹ It may be that self-identity interrelates with the modern milieu. It is therefore virtually impossible to “disengage completely from the abstract systems of modernity”.⁵⁹²

Again, Islamic religious scholars are finding it difficult to embrace the modern systems of alleviating infertility within the framework of Islamic religious beliefs and convictions on account of these ethical problems raised by modernity. The traditions of modernity as such are not an irresolvable problem for traditionalist

⁵⁸⁷ Ibid. p.9.

⁵⁸⁸ Wallerstein, J. and Blakeslee, S., 1989. *Second Chances*. London: Bantam.

⁵⁸⁹ Op. cit. Giddens, 1994, p.21.

⁵⁹⁰ Bayman, Z., 1990. *Modernity and Ambivalence*. Cambridge: Polity.

⁵⁹¹ Op. cit. Giddens, 1994, p.31.

⁵⁹² Ibid. p.142.

Muslims; it is the effects of some ethical modern scientific innovations which have become difficult to resolve. For example, Islamic traditionalists cannot adjust themselves to understanding the segregation of politics and faith and it becomes even more daunting for them to appraise the modern concept of 'secularism' and 'human rights'.

Within the last few decades modernity has generated discussions on social science topics, putting before Islamic religious scholars convincing propositions to shape their views and ideas. It is also monitoring the outlooks of tension created by the mainstream media towards modern reproductive technologies. Therefore, it is not difficult to predict that the modernity claim rests primarily on restrained notions of flux in an ever-changing world, which consistently is in need of effective orders. Modernity basically offers three options: a) in an ever-changing world, a consistent change of orders; b) to maintain the original realities in order to maintain the order; c) by means of a dual system certain rules remain constant and certain new changes are adopted.⁵⁹³

The issue remains as to whether the Islamic institutions keep a steadfast hold to their pre-established interpretations of Qur'anic verses and formulated ideas, or whether they can and should harmonise their ways of thinking within the prescribed modern ethical advances of scientific knowledge and technologies, bearing in mind that the core principles remain constant even if the doctrines may change. Doctrines as a rule are built upon absolute principles, but the doctrines which were formulated in early Islam can be considered as outdated within the ambit of a modern world. It is therefore necessary to appraise, understand and if necessary to adapt modern doctrine and not to evade opportunities and eventually lose the ability to grow.

Reluctance to adapt to modern doctrines can also create difficulties for Muslims brought up in Europe, especially when they hesitate to accept the traditional mode of 'Eastern' existence. For example, they find it difficult to accept arranged marriages which do not allow them the freedom of finding partners of their choice. Pernilla

⁵⁹³ Islam21C.com. <http://www.islam21c.com/islamic-thought/121-islam-and-the-problems-of-modernity> (Accessed August, 2012).

Ouis⁵⁹⁴ pinpoints an example of Prophet Mohammad, who granted a divorce to the wife of Thabit ibn Qais; it was not that there were any defects in her husband's character or religious dedication, it was "purely because she could no longer endure to live with him".⁵⁹⁵ In other words, she opted to exert her right of existence and freedom of choice.

One of the important motivations brought about by modernity is to create awareness of how "to gain a coherent and satisfying understanding of the world".⁵⁹⁶ It enables theology and science to be explored together with the need not to accept the metaphysical worldview often associated with science, such as modern human reproductive technologies and innovative procedures experienced in an entirely new light. This can be the basis for opportunities rather than a fermentation leading to clashes. The crucial arguments so far appraised give rise to an enquiry whether Islamic religious scholars can diminish the tension over the question of making use of modern ethical reproductive procedures by updating, adjusting and bringing them into line with the existing Islamic theological framework and establish a response to contemporary scientific environmental challenges, especially when "the history of ideas is not the master of history",⁵⁹⁷ and the historical account of the modern scientific developments do not chalk the actual course of history in the years to come.

It further advances the argument as to whether the allegorical precept revealed by God through the Qur'anic verses are outside human mediation, and a list of constant principles provided by God which were duly interpreted, subjectively or otherwise, by Islamic religious scholars cannot be further deliberated. If traditionalist Muslims are unable to mitigate outdated Islamic precepts,⁵⁹⁸ then there must be ways to make significant corrections or rectify omissions. One of the ways for Islamic religious scholars to accept these challenges is to appraise and understand modern developments and to get abreast of contemporary notions of modern human

⁵⁹⁴ Ouis, P., 2007. Muslim Marriage in Europe: Tradition and Modernity. *Global Dialogue*, 9 (3-4).

⁵⁹⁵ Ibid.

⁵⁹⁶ Ibid.

⁵⁹⁷ Neuhaus, R. J., 1988. *Commentary*, 64-68.

⁵⁹⁸ Op. cit. Haitham, 2010.

reproductive developments, by adopting an impartial attitude towards the independence of religious contributions. An alternative way can be to ask what they owe to future generations, and then lay the foundation for justifiable guidelines for ovum transfer and egg donation, recognising that “religions as a rule are human ideologies, and ones which have mostly served to legitimise social inequality and oppress human beings, especially women” (www.workersliberty.org/node/3196. Submitted on 8th October 2004).

From the secularism and modernity point of view, “Nowhere in the history of religion is the danger of interpretative generalisation becoming reductionist or simplistic more acute than in the study of Islamic religion”.⁵⁹⁹ In Islam, there is no such thing as an historical Islam that is outside the process of historical development. It is mainly because there is no centrality in Islam to guide and direct the “myriad of local or regional traditions of sharply differing form and often rapidly changing historical circumstances”.⁶⁰⁰ The practical developments and experiences of Islam from a historical point of view have often been specific to the surroundings of the immediate location in both time and space.

Pre-modern religious guidance, no matter how much infertile Muslim couples adhere to it, does not remove the uncertainty inhabited in their normal life.

“Religious authorities in particular quite often cultivated the feeling that individuals were surrounded by threats and dangers – since only the religious official was in a position to be able either to understand or to seek successfully to control these. Religious authority created mysteries while simultaneously claiming to have privileged access to them.”⁶⁰¹

Modern reproductive technologies gather their influence through an ethical approach of successful medical treatments, creating a challenging contrast with pre-modern cultural systems.

⁵⁹⁹ Graham, W. A., 1993. Traditionalism in Islam: An Essay in Interpretation. *Journal of Interdisciplinary History*, XXIII: 495-522.

⁶⁰⁰ Ibid.

⁶⁰¹ Wager, W. W., 1989. *Terminal Visions*. Bloomington: University of Indiana Press.

“After all, each of the major founders of modern social theory, Marx, Durkheim, and Max Weber, believed that religion would progressively disappear with the expansion of modern institutions. Durkheim affirmed that there is ‘something eternal’ in religion, but this ‘something’ was not religion in the traditional sense: symbols of collective unity persist in more secular vein as the celebration of political ideals.”⁶⁰²

However, modernity has reinvented a spiritual sensibility within religions. It is arguable that religions, by adopting the role of imparting knowledge within the acceptable limits of a modern threshold, have given a new definition to fertility and sterility. The potential of genetic engineering is also beginning to create a surge in altering the pre-modern process of human reproduction, “thus breaking the final tie connecting the life of the species by biological evolution”,⁶⁰³ one where sexuality may have no role to play.

An even more daring and demanding suggestion is put forward by Veit Bader: “Most American liberal philosophers, among them Dworkin, Ackerman, Galson, Rawls, Macedo, and Audi, ‘believe that ... values of freedom, equality and tolerance are best preserved if religion is removed from public affairs’. They are virtually unanimous in their staunch advocacy of the ‘wall of separation’.”⁶⁰⁴ Tibi’s observation, when co-joined with Bader’s extreme analysis, creates an impasse for cautious Islamic progression towards modernity. It does not present the way to formulate a feasible proposition of some sort of co-ordination between religion and modern science to help alleviate the sufferings of infertile couples.

It thus becomes more difficult to entertain the idea of defining the ‘relationship of lineage’⁶⁰⁵ and identity as a social rather spiritual matters. It even misplaces Azzam Tamimi’s argument that “Islam is a divinely ordained set of commandments, values,

⁶⁰² Op. cit. Giddens, 1994, p.207.

⁶⁰³ Ibid. p.219.

⁶⁰⁴ Bader, V., 1999. Religious Pluralism: Secularism or Priority for Democracy? *Political Theory*, 27 (5): 597-633.

⁶⁰⁵ Qur’an 25:54.

and directives,⁶⁰⁶ and its claims are not incompatible with those of science, technology and democratic self-government.”⁶⁰⁷ This in fact becomes a defensive denial to review or interpret the long-established values and set of rules, and to align them with changes which have taken place in modern societies.

Thus, Islamic religious scholars’ impartial observations may not be conducive enough to accelerate the pace in the knowledge-intensive modern ethically reproductive scientific progress of secular society. Modernity in religion is seldom enshrined with rituals. Instead, it is comprised of a set of beliefs, cultural traditions, and institutional values both permanent and immutable in day-to-day reckonings. It impels some kind of incongruity between religious guidance and cultural traditions restricting endeavours towards modernity.⁶⁰⁸ Islam is not the only religion which encounters such problems; modernity teases all religions sooner or later, although the degree of crisis may vary.⁶⁰⁹ As far as Islam is concerned, it is only too obvious when lineage is treated as a religious and not an ethical social issue, and infertile couples are left without proper guidance.

It has also become evident that the cultural debates held amongst Muslim scholars from the 19th century onwards,⁶¹⁰ while appreciating the need to become abreast with modern science, have not made any progress. The issues were too difficult and more complex than they were generally realised.⁶¹¹ Engineer thus deciphers the dilemma by stating that: “For some it is only theology that is important and for others theological phenomenon has to be placed in sociological perspective for better comprehension.”⁶¹² If there is any binding feeling from Engineer’s assertion, it may

⁶⁰⁶ The notable few Muslim scholars who were in favour of modernity were Rifa’ah al-Tahtawi (1801-1873), Khairuddin Al-Tunisi (1810-1899), Jamal Al-Din Al-Afghani (1838-1897), Abdel Rahman Al-Kawakibi (1854-1902) and Muhammad Abduh (1849-1905).

⁶⁰⁷ Tamimi, A. S., 2003. The Renaissance of Islam. *Daedalus*, 132 (3): 51-58.

⁶⁰⁸ Engineer, A. A., 2000a. *Islam and Secularism*. The Institute of Islamic Studies and Centre for Study of Society and Secularism.

⁶⁰⁹ op. cit. Tamimi, 2003.

⁶¹⁰ Engineer, A. A., 2000b. *Muslims, Modernity and Change*. The Institute of Islamic Studies and Centre for Study of Society and Secularism.

⁶¹¹ Maulvi Mumtaz Ali Khan from India published his book, *Haqug al-Niswan* (Rights of Women), indicating his feelings, but unfortunately it is not now available.

⁶¹² Op. cit. Engineer, 2000b.

be that as the theological discourse is enshrouded with the 'idiom of duty', the cultural traditions of Islam refrain from readily recognising modern culture. "Thus, traditional Islam imposes duties and rejects the idea of right."⁶¹³ For example, the exercise of one's human rights⁶¹⁴ or the rights of human autonomy to fulfil one's wishes without causing any harm, are guiding forces of modernity which lack support from Islamic religious scholars. It is not impossible to review the existing theological principles and make them simpler and more easily reconcilable with modern scientific developments, than is given to be believed.⁶¹⁵ William Galston,⁶¹⁶ in his book *Jews, Muslims and the Prospects for Pluralism*, states that:

"Acceptance of pluralism comes more easily to religions that emphasise inner conviction because they need to ask little of politics beyond being left alone. Moreover, the exposure of Islamic regimes to the culture of modernity and the institutions of democratic accountability will produce a tolerable degree if not of respect at least of liberty for diverse faiths and ways of life."⁶¹⁷

One precedent which is relevant to this thesis is that in relation to other Islamic states, Iran has side-stepped most of the theological arguments. The religious leaders in Iran have shown a remarkable open-mindedness and flexibility towards embracing innovations in science and technology, including the use of modern reproductive technologies.⁶¹⁸ According to Dr. Abdol Karim Soroush, previously "the clergy in Iran talks only of duties and is not prepared to concede rights to people".⁶¹⁹ Iranian Muslim scholars have adopted a line of modernity by incorporating secular elements into their discussions, by 'total intertwining of religion and politics',⁶²⁰ codifying Islamic law and making noticeably modern alternations. In addition, they are

⁶¹³ Ibid.

⁶¹⁴ Ibid.

⁶¹⁵ Sir Syed Ahmed from India was a great reformer of the 19th century. He was not against the promotion of science within the context of the Qur'an. His main teaching was modern education and a proper understanding of Qur'an.

⁶¹⁶ Galston, W., 2003. Jews, Muslims and the prospects for pluralism. *Daedalus*, 132 (3): 73-77.

⁶¹⁷ Ibid.

⁶¹⁸ Op. cit. Khamanei, 2004.

⁶¹⁹ Op. cit. Engineer, 2000b.

⁶²⁰ Op. cit. Keddie, 2003.

beginning to render relatively flexible religious solutions to ‘intractable social problems’⁶²¹ emanating through secularism. They seem to have given first priority to assisted reproduction technology, by considering IVF favourably and allowing ovum transfer and egg donation.

Iranian clerics had laid claims to more duties than they were prepared to grant to the Iranian people.⁶²² Lately, according to the concept of *Wilayat-e-Faqih* (the authority of the jurist) which was bestowed firstly to Ayatollah Khomeini and now his successor Ayatollah Khamenei, entire authority was entrusted in the hands of the *Faqih* (the jurist).⁶²³ As a result, several Muslim states are also beginning to value long-associated Western secularism in the sphere of the modernity of science and assisted reproduction technologies. Turkey and now Iran have become prime examples in this respect.

Dr. Muhammad Iqbal distinguishes his thinking from Islamic religious scholars and rightly advocates a predominant line of reasoning by stating that *ijtihad* is a principle of acute dynamism, bestowing independence and complete authority in law making, and the present elected assemblies of representatives is another form of defining the Islamic term *ijma* (consensus) of the people. Thus, the laws, reviewed, amended or enacted, constitute an authenticated and mandatory set of exercises.⁶²⁴ In view of Dr. Iqbal’s reasoning, it would not be invalid for infertile Muslim couples to seek recourse from respected Islamic assemblies of representatives when seeking help to make use of new assisted reproductive procedures.

An infertile Muslim couple’s predicament is further explained by Dr. Iqbal when he describes modernity by stating that:

“It [society] must possess eternal principles to regulate its collective life, for the eternal gives us a foothold in the world of perpetual change. But eternal principles, when they are understood to exclude all possibilities of change,

⁶²¹ Ibid.

⁶²² Op. cit. Engineer, 2000b. p.3.

⁶²³ Ibid.

⁶²⁴ Op. cit. Iqbal, 1954.

which, according to the Qur'an, is one of the greatest 'signs' of God, tend to immobilize what is essentially mobile in its nature. This is known as *ijtihad*.”⁶²⁵

Fazlur Rahman does not seem content with Iqbal's reasoning when he states that:

“Iqbal's philosophical legacy had, therefore, not been followed, partly because of what he has said but largely because he has been both misunderstood and misused by the political mongering followers. His 'Reconstruction of Religious Thought in Islam' has remained a purely personal statement of the Islamic Faith, and has not so far been able to function as a datum-line from which further development could take place.”⁶²⁶

However, Dr. Iqbal's main argument can be pursued; the argument that even though some of the Islamic principles are eternal, their application should change with the passing of time is persuasive, provided that the eternal principles of Islam should not remain static and immobile.⁶²⁷ Changes should be recognised and appreciated, and if necessary be adapted in accordance with the mood of the society, especially if scientific innovations in medically reproductive procedures are considered more seriously and profoundly. Islamic religious scholars can be fully harnessed in their pursuit of recognising that lineage is a social rather than religious issue and gamete donation can be resolved through modern biological and genetic procedures.

Islamic religious scholars, both of Arab and Asian origin in the mid-19th and 20th centuries, could not come to grips with espousing the modernity of European nations. European nations, in preference to dutiful religious beliefs, advocated equality and justice, and supported innovative scientific research procedures along with a liberated freedom of thought.

Al-Tunisi, in his book *Aqwam al-Masalik fi Taqwim al-Marnalik* (The Straight Path to Reformation of Governments), argues that the modernity of community “would

⁶²⁵ Ibid.

⁶²⁶ Op. cit. Rahman, 1979, p.225.

⁶²⁷ Op. cit. Engineer, 2000b, p.3.

put it on a faster track toward civilisation, would limit the rule of despotism, and would stop the influx of European civilisation that is sweeping everything along its path”.⁶²⁸ It is encouraging to contrast Al-Tunisi’s assertion with Shibli Shumanhhil’s statement that nations grew stronger only when religion grew weaker, and noted that this was true of Europe, which had become powerful and truly civilised.

Furthermore, amongst European nations, the path to traditional cultural development became possible through the development of scientific innovation rather than through traditional religious beliefs and convictions. Religious beliefs laid the foundation for European nations to develop more by dint of its knowledge. There may be a ray of hope due to Iranian, Turkish, Lebanese and indeed Egyptian scholars’ interpretation of Islamic *fiqh*. In his lecture at the University of Westminster, Ghannouchi suggested that Islamic religious scholars can learn and impart knowledge much more effectively without having to forego their Islamic cultural identity.⁶²⁹ Lately, several Islamic scholars in Iran have reported that they are of the opinion that broad interpretations of existing Islamic laws can recognise most of the secular modern principles without relinquishing traditional and established ties with politics and religion.⁶³⁰

Tamimi Azzam,⁶³¹ while referring to Islamic cultural modernity, the favourite subject of Farah Antun,⁶³² dedicated his book to:

“those men of sense in every community and every religion of the east who have seen the danger of mingling the world with religion in an age like ours, and have come to demand that their religion should be placed on one side in a sacred and honoured place, so that they will be able to compete with those who

⁶²⁸ Al-Tunisi, K., 1972. *Aqwam al-Masalik fi Taqwim al-Mamalik*. Tunis: Al-Dar Al-Tunisiyah.

⁶²⁹ Ghannouchi, R., 1992. *Islam and the West*. Lecture given at the Centre for the Study of Democracy, University of Westminster.

⁶³⁰ Keddie, N. R. Women in Iran since 1979. *Social Research*, 67 (2): 405-438.

⁶³¹ Op. cit. Tamimi, 2003.

⁶³² Quoted by Tamimi, 2003.

belong to it, otherwise it will sweep them all away and make them the subjects of others.”⁶³³

Accordingly, Tamimi and Antun have laid a special emphasis on the separation of temporal and spiritual authorities. If European countries were now more tolerant than Arab, he argued, “it was not because they were Christian, but because science and philosophy had driven out religious fanaticisms and a separation of religion and politics had taken place”.⁶³⁴ How far this can become a reality within Islamic tenets in an effort to find a conciliatory method remains to be seen.

⁶³³ Hourani, A., 1983. *Arabic Thought*. Cambridge University Press. pp.254-255.

⁶³⁴ *Ibid.* pp.256-257.

Chapter Five

Islam, the Development of Human Reproduction Procedures in a Democratic Secular Society and British Muslims

“The important thing, given the priority of democracy, should not be whether arguments are religious or secular but whether arguments, attitudes, and practices are compatible with the principles, rights, culture, virtues, and good practices of social, democratic constitutionalism.”

Veit Bader⁶³⁵

If the rules of democracy are discussed within the precepts of Islam, then it is noticeable that Islamic Religious Scholars recognise that the Qur’anic guidance of equality,⁶³⁶ human dignity⁶³⁷ and justice,⁶³⁸ are attributed to Prophet Mohammad,

⁶³⁵ Thiemann, R. F., 1996. *Religion in public life*. Washington DC: Georgetown University Press; Weithman, P., 1997. Introduction: Religion and the liberalism of reasoned respect. In P. Weithman, ed., *Religion and Contemporary Liberalism*. Notre Dame, IN: University of Notre Dame Press, pp.1-38; Hollenbach, D., 1997. Politically active churches. In P. Weithman, ed., *Religion and Contemporary Liberalism*. Notre Dame, IN: University of Notre Dame Press, pp.297-306; Quinn, P. L., 1997. Political liberalisms and their exclusions of the religious. In P. Weithman, ed., *Religion and Contemporary Liberalism*. Notre Dame, IN: University of Notre Dame Press, pp.138-61.

⁶³⁶ Qur’an 2:178 *“O ye who believe! Retaliation is prescribed for you in the matter of murder; the freeman for freeman, and the slave for the slave, and the female for the female. ... This is an alleviation from your Lord.”*

⁶³⁷ Qur’an 8:4 *“Those are they who are in truth believers. For them are grades [of dignity] with their Lord, and pardon, and a bountiful provision.”*

⁶³⁸ Qur’an 4:58 *“Lo! Allah commandeth you that ye restore deposits to their owners, and, if ye judge between mankind, that ye judge justly. Lo! comely is this which Allah admonisheth you.”*

who in his humility, always preferred to be described as a human being.^{639, 640} In a democratic sense he was exhorted by God to *shura* (consult) his companions⁶⁴¹ on worldly matters. In this pursuit he seldom acted as an authoritarian or imposed his opinion except on matters of *deen* (religion). Fazlur Rahman, in his book *Islam* states “that the Prophet consulted his Companions, despite the fact that his decisions were sometimes challenged in some quarters and despite the fact that the Qur’an itself sometimes criticised him,⁶⁴² but his religious authority was binding.”⁶⁴³

As the head of the Islamic community, Prophet Mohammad had always discouraged the forming of a society of social hierarchy, which could prove to be revolutionary.⁶⁴⁴ In fact, he often discouraged his followers from asking him too many questions, as his pronouncements would then become binding on them.⁶⁴⁵ After his death, this system of forming decisions on the basis of a consensus of opinion over relevant issues of a public nature lasted approximately thirty years, the total period of four Caliphs’ rule.⁶⁴⁶ This was then followed by a feudal system of government.

The point in contention can be that now that the Prophet Mohammad is no longer with us, the changes brought about by gradually successful developments in scientific human reproduction, technological and many other fields of knowledge needs to be accommodated, and if possible contributions should be made by reviewing the existing Shari’ah laws in accordance with the democratic rules. Once these modern scientific and other developments have been incorporated, then the

⁶³⁹ Qur’an 23:33 “*And the chieftain of his folk, who disbelieved and denied the meeting in the Hereafter, and on whom We had bestowed the good things of this life said: ‘He is no more than a man like yourselves; he eats of that which you eat, and drinks of what you drink.’*”

⁶⁴⁰ Qur’an 25:7 “*And they say: ‘What sort of a messenger is this, who eats food, and walks through the streets? Why has not an angel been sent down to him to give admonition with him?’*”

⁶⁴¹ The Companions, commonly known as *Ashab-e-Suffa*, are highly intelligent and men dedicated to the cause of Islam.

⁶⁴² Qur’an 9:43 “*Allah give you grace! Why did you grant them exemption until those who told the truth were seen by you in a clear light, and you hadith proved the liars?*” Qur’an 80:1 (The Prophet) frowned and turned away.

⁶⁴³ Op. cit. Rahman, 1979, p.69.

⁶⁴⁴ Op. cit. Engineer, 2000b, p.3.

⁶⁴⁵ Ibid.

⁶⁴⁶ Husain, T., circa 1933. *Al-Fitna a-Kubra* (The Great Insurrection).

confusion of identity and other uncertainties encountered in the field of modern human reproduction can be meaningfully discussed.

As briefly discussed earlier, the majority of Islamic states are run by kings, sheikhs, and dictators, modelled on outdated feudal systems, where religious teachings are left in the hands of religious scholars who are not an elected body and their deliberations are open to question.

“The Ulama, who are interpreting the Qur’anic verses or Hadiths today, may be doing so under the direction of feudal rulers. If any of the interpretation happens to be contrary to modern environment, as it was directed by the rulers, it is considered to be justified by the feudal hierarchy and monarchical system.”⁶⁴⁷

Thus, for their own benefits and conveniences, modern Islamic rulers are resisting changes and reforms to the existing cultural system and in doing so are negating the spirit of Islamic dynamism,⁶⁴⁸ which does not prove either productive or beneficial. It is as if imposing an ethical or a moral restriction on people who may not contribute to such a point of view. Any conflict ensuing from such a distinction may become a cause of the breach of the peace or disharmony in the unity of society.⁶⁴⁹ It is therefore, Bayertz advocates, that “democracy is not based on the opinion or consensus but on the principle of majority”.⁶⁵⁰

To bring Islamic cultural systems abreast with the changes brought about by modern scientific developments, it is becoming imperative that Islamic religious scholars seriously contemplate reviewing the existing Shari’ah laws through a democratic system, and, if necessary, to amend them accordingly. Although some of the modern liberalised Islamic religious states, such as Iran, Lebanon, Tunisia, and Algeria, have

⁶⁴⁷ Engineer, 2000b, p.3.

⁶⁴⁸ Engineer, A. A., 2002b. *Sociological Approach to Islam*. The Institute of Islamic Studies and Centre for Study of Society and Secularism.

⁶⁴⁹ Engelhardt, Jr, H. T., 1986. *The foundations of bioethics*. Oxford: Oxford University Press.

⁶⁵⁰ Bayertz, K., 1994. The concept of moral consensus: philosophical reflections. In: K. Bayertz, ed., *The concept of moral consensus*. London: Kluwer Academic, pp.41-58.

accepted and incorporated some of the scientific human reproductive changes, other Islamic states are still hesitant to invite opinions from their philosophers and scientists. Instead, they are still ruling as religious, philosophical and scientific fundamentalists with their respective unilateral rights.⁶⁵¹

Religious tenets, as a rule, encourage those activities which are in praise of the Almighty and are also beneficial to His creation. In reverence to these religious tenets, the European Convention on Human Rights has also given consideration when recognising regulatory procedures that “are prescribed by law and are necessary in a democratic society in the interest of public safety, for the protection of public order, health, morals, or for the protection of the rights and freedom of others”.⁶⁵² The European Convention on Human Rights does not implicitly or explicitly allow unwarranted dissemination of any religion’s principles, which, if put into practice, may interfere with human rights, or may prove to be contrary to religious guidance. It is therefore secular states which as a rule welcome democratic ideological expression by appreciating that “each person’s religion, including the option of having no religion, is a strictly personal matter”.⁶⁵³

Democratically formed secular societies are seldom concerned with religious faiths and beliefs after ensuring that religious expressions are democratically regulated and are in accordance with the law of the land. The success of human reproductive innovations is the by-product of such democratically deliberated regulations which were encouraged in secular societies. To co-ordinate such successes and to benefit from it has not yet gathered momentum amongst Islamic states.

So far, religions, especially Islam, have seldom followed democratic practices when transcending theological guidance. Islam is still under the influence of the existing Arab societies who have their own established cultural values, distinct ethos, reformed customs and religious cultural traditions. Even though Islam came into being when there was no formal state or politically structured state machinery, its

⁶⁵¹ Op. cit. Baker, 1999.

⁶⁵² Article 9.2 of the European Convention on Human Rights.

⁶⁵³ Council of Europe Parliamentary Assembly Recommendation 1720 (2005).

Shari'ah laws have never shown any inclination, democratically or otherwise, to assimilate medically assisted human reproduction for infertile Muslim couples as a viable proposition.⁶⁵⁴ Neither the rulers of Islamic states, nor the sparse and inconclusive discussions of Islamic religious scholars have invited people to discuss modern reproductive developments democratically and to devise a method to make use of these innovative procedures comprehensively. In addition, they have not manifested sufficient inclination to attain a consensus of opinion among Muslim people towards the difficulties encountered by infertile Muslim couples. Their inclination not to change some of the decadent existing cultural systems is not sufficiently convincing.

Rifa'ah al-Tahtawi (1801-1873), an Al-Azhar scholar who served as a religious guide in France, was of the opinion that Muslims should borrow those elements of European culture that did not conflict with the principle of Shari'ah laws.⁶⁵⁵ He advocated the introduction of democracy in the Middle East by contending that:

“civilisations are turns and phases. These sciences were once Islamic when we were at the apex of our civilisation. Europe took them from us and developed them further. It is now our duty to learn from them just as they learned from our ancestors.”⁶⁵⁶

Commenting upon the principles of democracy, he further elaborated that when comparing them with political pluralism forming ideological and jurisprudential principles of Islam, secular democracy could be compatible with Islamic Shari'ah laws.⁶⁵⁷ Rifa'ah's recommendations did not seem to have cast a significant impression on the thinking of Islamic states so far.

New knowledge often reflects new choices, and new dilemmas require new deliberations with different priorities. Thus, applying newly formed rulings incorporated in the specific context of Islamic Shari'ah law would facilitate those

⁶⁵⁴ Op. cit. Dirie, 2004.

⁶⁵⁵ Al-Dajani, M. S., 1984. *Tatawur Mafahim al-Dimuqratiyah fil-Fikr al-Arabi al-Hadith*. In: *Azmat al-Dimuqratiyah fil-Watan al-Arahi*. Beirut: Arab Unity Studies Centre.

⁶⁵⁶ Ibid.

⁶⁵⁷ Abdessalam, F., 1978. *Al-Ahzab al-Siyasiyah fil-Islam*. Cairo: Qalyoob Publishing House.

who were in need of such rules. Different economic and social circumstances create specific needs and choices, and an ethical process that fails to take account of these circumstances would be incongruous and likely to be unjust. It is not impossible for Islamic religious scholars to congregate a democratic modern review, remembering always that Shari'ah laws are also man-made laws, enacted under the prevailing spirits of that time.

At present, what is at variance is the meaningful affirmation from Islamic religious institutions to co-ordinate with the political and social developments of secularism taking place in the UK – a country of great diversity in culture and religion. Infertile Muslim couples in the UK are finding it difficult to reconcile their differences concerning religious beliefs against the secular modern democratic cultural system. There is a significant population of Muslims⁶⁵⁸ in the UK who may be inclined to reconcile religious thoughts to create a harmonious and intellectually workable system of living. It would seem that biotechnical innovations, especially in the field of infertility, have thrown challenges to early Islamic religious guidance.

Kent Greenwalt, from a subjective perspective, is of the view that:

“The realm of government is not salvation; it is justice and general welfare. In dealing with common problems, citizens should employ a common discourse. It would not follow that religious citizens would never have occasion to refer to religious truth in reaching political positions; religious perspectives might influence their view of what secular justice requires to the poor, the infirm, the newborn, and the yet to be born. But in a culture in which citizens of diverse religious views, the saved and unsaved, must build a common life, the main discourse of politics might reasonably rest on grounds that do not depend on sectarian religious truth.”⁶⁵⁹

⁶⁵⁸ Kerbaj, R., 2009. Muslim population rising 10 times faster than rest of society. *The Times*, 30th January.

⁶⁵⁹ Op. cit. Greenwalt, 2001.

British Muslims

There are three groups of British Muslims residing in the UK. There are those Muslims who have migrated to the country, bringing with them a cultural heritage which is not British. This group is not homogeneous; their disparate nature reflecting the sources of their origin and their reason for migrating. Their background and origin also shape their identities and the extent to which they may be integrated into a secular society.⁶⁶⁰ The second group is the offspring of the first group. These are subconsciously being influenced by secular British culture and often radicalise inherited spiritual concepts when the secular concept proves contrary to their religious beliefs. Their transitorily disestablished frame of mind attracts them towards the first group, but this seldom proves to be satisfactory. The third group are third-generation British Muslims, who would like to be part of the community as a matter of right and be proud of it, but there is often tension with their parents and/or the fear of staunch reprimands from Islamic religious scholars and this restrains them from being decisive. There is yet another group of Muslims, those who are converts to Islam. They are guided to Islam with a relatively clearer understanding and belief than the other three groups.⁶⁶¹

Although it would seem as if the Muslim population is a fairly recent arrival in the UK, in fact there have been many centuries of contact between Britons and Muslims. For example, as early as 775, coins were minted by King Offa of Mercia establishing linkage with Muslims,⁶⁶² and intermarriages between Muslims and non-Muslim Britons took place even during the time of the Crusades.⁶⁶³ The first large group of

⁶⁶⁰ Werbner, P., 1996. Stamping the Earth with the name of Allah: Zikr and the sacralising of space among British Muslims. *Cultural Anthropology*, 11 (3): 309-338; Lewis, P., 1994. *Islamic Britain: Religion, Politics and Identity among British Muslims*. London: IB Tauris; Brighton, S., 2007. British Muslims, multiculturalism and UK foreign policy: 'integration' and 'cohesion' in and beyond the state. *International Affairs*, 83 (1): 1-17.

⁶⁶¹ Murad, A.-H., 1997. *British and Muslim*. Available at: www.masud.co.uk/ISLAM/ahm/british.htm.

⁶⁶² Op. cit. Hellyer, 2007.

⁶⁶³ The earlier history bears reference to:

Peter Lyall, the Scotsman who became an admiral in the Ottoman navy; Abdullah Quilliam, the Liverpool solicitor who founded a mosque and orphanage in which Christian waifs were raised as Muslims; Benjamin Bishop, His Majesty's consul in Cairo, who turned Muslim and mysteriously disappeared; Lord Headley, the peer; Lady Evelyn Cobbold, the explorer and

Muslims, who arrived in the UK some 300 years ago, were sailors working mostly from Sylhet in what is now Bangladesh. There are records of Sylhetis working in London restaurants as early as 1873.⁶⁶⁴ The first Muslims who sought a permanent abode were Yemeni sailors who arrived in the ports of Swansea, Liverpool and South Shields shortly after 1900. Muslims built a mosque at 2 Glyn Rhondda Street, Cardiff, in 1860.⁶⁶⁵

During the 1960s and 1970s there was a consistent growth of the Muslim population in the UK. The diminishing influence of British colonial power and the gradual withering away of the British Empire gave rise to the establishment of the British Commonwealth, which became a salient source of Muslim immigration to the UK.⁶⁶⁶ It is estimated that there are over 1.8 billion Islamic adherents worldwide,⁶⁶⁷ of which approximately 1.8 million are residing in the UK.⁶⁶⁸ With the present rate of world population growth, it is expected that the Muslim population will increase to 2.5 billion in the year 2020.⁶⁶⁹ With the relative increase of the Muslim population in the UK,⁶⁷⁰ the number of infertile Muslim couples will naturally increase rather than diminish. To assess the magnitude of the infertility problems may require gauging the attitude, behaviour and outlook of infertile Muslim couples residing in the UK under the secular democratic cultural system.

pilgrim to Mecca; Mubarak Churchward, the stage painter and friend of Lily Langtry; the anonymous Scotsman who became governor of Medina; and many more. Winston Churchill allocated funds to build the most prestigious mosque in the United Kingdom. The opening ceremony was performed by King George VI in 1944.

⁶⁶⁴ BBC, last up-dated 2009. *History of Islam in the UK*. Available at: http://www.bbc.co.uk/religion/religions/islam/history/uk_1.shtml. (Accessed 8th June, 2008).

⁶⁶⁵ Ibid.

⁶⁶⁶ The Anglo-Muslim community has enriched the diverse and colourful story that is British Muslims.

⁶⁶⁷ News Views: Reproductive Health Care Policies around the world. Op. cit. Serour *et al.*, 1995; L. Gardet; J. Jomier, 'Islam'. *Encyclopaedia of Islam Online* (Accessed 2nd May, 2007).

⁶⁶⁸ Anwar, M. and Bakhsh, Q., 2003. *British Muslims and State Policies*. Coventry: University of Warwick. Available at: <http://www.statistic.gov.U.K./census2001/profiles>.

⁶⁶⁹ Omran A., 1990. *Un data in demography of the Islamic world*. Paper presented at the International Conference on Islam and Population Policy, Jakarta, Indonesia.

⁶⁷⁰ [BBC NEWS | Europe | Muslims in Europe: Country guide.](#)

Chapter Six

Precepts of Ethics and Morality in Lineage and Adoption

It has already been discussed that the principles of secularism are discretionary rather than mandatory issues. This chapter mainly considers the significance of ethics and morality with regard to the principle of lineage relationships, arguing that, to all practical purposes, lineage is a social rather than a spiritual or mandatory issue. Through the interpretation of the Qur'anic verse 25:54, it has been transcribed into a spiritual mode rather than conforming to a social cultural system. It thus lacks the initiative of being comprehensively appraised.

From an ethical point of view, every religious precept has a direct impact upon the development of human conscience. These precepts often become the sources for humans to differentiate between right or wrong actions in their undertakings. In the past, religious scholars have provided interpretations and explanations of the Qur'anic allegorical verses and the meanings of Hadith. The Qur'anic verse pertaining to lineage was interpreted by Islamic scholars in a mode befitting of the time.

Modern human reproductive technologies are neither contrary to the ethics of established precepts, nor do they persuade infertile Muslim couples to benefit from the new alleviating procedures. Infertile Muslim couples may be hesitant to readily benefit from these procedures in the absence of clear religious guidance. Islamic religious scholars, stunned with the unabated unilateral successes of modern human reproductive technologies, are constrained from readily recognising these developments of microethical and macroethical pursuits.⁶⁷¹ Instead, Muslim scholars' manifestation of tolerance towards these procedures, according to Gordijin, hinges on three lines of fundamental ethical and moral guidance. Firstly, the issue

⁶⁷¹ Cook, R., 1991. Perspective on abortion pill. Is it flat ban ethical? *Los Angeles Times*.

under review is disapproved, secondly it can be stopped and thirdly it is allowed to be pursued.⁶⁷²

Toleration, as a rule, demands and gets respect for practices which are contrary to religious beliefs and convictions.⁶⁷³ Again, toleration can nestle comfortably with those infertile Muslim couples who deviate from certain religious teachings and accept modern reproductive technologies procedures. They leave it to Islamic religious scholars to review and revise established cultural Islamic traditions to accommodate the modern principles of reproduction. It can also be within infertile Muslim couples' human rights to take refuge, if necessary, under the umbrella of the traditional principles of justice, autonomy (respect for persons), beneficence (duty to do good) and non-maleficence (avoid harm), the comprising principles of individual liberty,⁶⁷⁴ the utilitarian principle of human behaviour⁶⁷⁵ and the principle of human justice.⁶⁷⁶ Islamic religious scholars do, however, associate with these equitable principles in a variety of Islamic thoughts, but they have not yet accepted modern reproductive procedures as a whole, whether as a microethical⁶⁷⁷ or macroethical concern.⁶⁷⁸

Principles of ethics and morality can also become a valid concern against compelling defences of restraining opportunities to act freely. Medical innovative procedures can easily step aside for socially established religious principles practised in

⁶⁷² Gordijn, B., 2001. Regulating moral dissent in an open society: the Dutch experience with pragmatic tolerance. *Journal of Medicine and Philosophy*, 26: 225-244.

⁶⁷³ MacKlin, R., 1990. Ethics and Human Reproduction: International Perspectives. *Social Problems*, 37 (1): 38-50.

⁶⁷⁴ The principle of individual liberty originated around the time of John Locke (1632-1707), when he elaborated on the moral philosophy of individualism. It was later followed by John Stuart Mill (1860-1873) in his publication, *On Liberty*.

⁶⁷⁵ Bentham, J., 1789. *Introduction to the Principles of Morals and Legislation*. Oxford: Clarendon Press. Bentham propounded the principle of utilitarianism, which was supported by John Stuart Mill in his essay *Utilitarianism* in 1861.

⁶⁷⁶ The principle of Justice was the brainchild of the Western philosopher Plato, and John Rawls in his publication *Theory of Justice* (1971) claims that equity or fairness can be the central feature of distributive justice.

⁶⁷⁷ The macroethical level applies to relationships among communities themselves and between communities and their members.

⁶⁷⁸ Op. cit. Cook, 1991.

societies,⁶⁷⁹ preferably when human reproductive technological procedures are distinguished contrary to the principles of religious tenets.⁶⁸⁰ Infertile Muslim couples, under the guidance of religious tenets, can easily be disillusioned with the inaccessibility of the existing reproductive facilities available in a secular society, an obvious disharmony between Islamic religious scholars and science.

Ethics and morality have an equally important influential role to play in checking the behaviour and conduct of physicians and professional scientists. Modern reproductive technologies are being progressively equipped with more effective and meaningful therapeutic resources in comparison with the early stages of scientific developments. It is now quite feasible for medical professionals to intervene, not only to supplicate the processes of procreation, but also to “take in hand his own destiny”⁶⁸¹ and indulge in “the temptation to go beyond the limits of a reasonable dominion over nature”.⁶⁸² It is being gradually established that the extremely unique and valuable scientific innovative knowledge of artificial reproductive technology is unabatingly promoting valuable developments in every aspect of reproductive treatment, especially in the field of infertility. According to Doyle, “clinical life must go on and moral and legal indeterminacy within medicine cries out for practical resolution”,⁶⁸³ even though Islamic religious scholars are at variance with it.

Thus, the tug-of-war between religion and science has often overstepped the realms of ethical and moral bounds,⁶⁸⁴ landing it in a religiously un-bridgable and scientifically unilateral arena. Although modern scientific human reproductive technologies have played a broad and tolerable part within social differences, they are nevertheless regarded as not allowing enough time for religions to understand,

⁶⁷⁹ Op. cit. Serour, 1994.

⁶⁸⁰ Serour, G. I., 1993b. *Religious, secular and medical ethics. Are there any common themes? A Muslim perspective*. Paper presented at the Firth International Congress on Ethics in Medicine at Imperial College, London.

⁶⁸¹ John Paul II, Pope, 1980. *Discourse*. Presented at the 81st Congress of the Italian Society of Internal Medicine and the 82nd Congress of the Italian Society of General Surgery.

⁶⁸² Ibid.

⁶⁸³ Doyle, L., 2001. Clinical ethics committees and the formulation of health care policy. *Journal of Medical Ethics Supplement*, 27: 144-149.

⁶⁸⁴ Barbour, I., 1997. *Religion and Science: Historical and Contemporary Issues*. New York: Harper Collins.

appreciate and come back with appropriate answers to the issues involved. It is therefore religions, especially Islam, which are reluctant to deviate from their established principles, beliefs and convictions.

This rift between religions and modern scientific human reproductive developments in Peter Berger's view marks the gradual decline of religious authority.⁶⁸⁵ This may be mainly because people have become more educated and have started analysing myths, superstitions and irrational beliefs more easily and conveniently. It has been further assisted by the rapid and successful growth of scientific developments taking place in secular societies, which are slowly but surely pushing religions into the margins. Steve Bruce⁶⁸⁶ optimistically maintains that religions will only retain sufficient importance provided they disassociate themselves from supernatural fortitudes. Whereas Rodney Stark and William Bainbridge argue "that the human quest for the supernatural will never diminish, and thus new religions will emerge to replace older ones that fail to adapt to contemporary circumstances and needs".⁶⁸⁷ According to Robert Campbell, it is quite reasonable to expect such empirically ethical studies of people's views to bring religion and science together to co-ordinate with each other in clarifying their respective positions and to work under a more feasible and agreed understanding.⁶⁸⁸

Whether the alleviation of infertility, ethically and morally, falls within the natural rights of infertile Muslim couples, in the absence of clear guidance from Shari'ah law, it still remains a mooted subject. According to MacKlin Ruth:

"Natural rights are usually understood as the right of people *not* to be coerced or interfered with, while social rights pertain to the obligation of government to provide basic goods and a decent minimum standard of living to its citizen. If there are any natural rights, they are held by all persons whether or not they

⁶⁸⁵ Berger, P., 1967. *The Sacred Canopy*. New York: Doubleday.

⁶⁸⁶ Bruce, S., 2001. *God is Dead*. Oxford: Blackwell.

⁶⁸⁷ Campbell, R. A., 2005. *The Canadian Review of Sociology and Anthropology*.

⁶⁸⁸ *Ibid.*

are acknowledged or expressed in constitution and statutes. Social rights, however, are typically asserted in laws, declarations, or manifestos.”⁶⁸⁹

Admittedly, “not all methods of achieving a desired good are morally or legally justifiable”.⁶⁹⁰ At the same time, the ethical, moral and social achievements of the modern world have enlarged and enriched the wellbeing and dignity of human beings to an extent that, if one is denied fundamental rights, then the entire surroundings may protest against it. In the absence of some meaningful and constructive guidance issued by religious scholars, it may become a painful lesson for those infertile Muslim couples who are conscripted to ignore modern reproductive technologies as their natural rights.

In many respects, Islam has manifested unique and unprecedented regulatory cultural and traditional systems in recognising the equality and dignity⁶⁹¹ of human beings. In Islam, the criterion of equality and human dignity opens the threshold for the application of justice across humans’ primary and fundamental rights. Justice, being the primary objective, can also limit the scope of freedom, but it must not be interpreted as a defining pictogram to blur and support the archaic traditional system. Justice is not to stultify practices, or withhold proper contributory developments and the growth of modern society. Modern reproductive scientific innovations are yet to occupy even an ancillary space within these daunting and meaningful arguments. It is, nevertheless, difficult to realise all the ethical and moral objectives independent of religious guidance. In a secular society, those issues that pose a direct threat to human attitude, behaviour or wellbeing can be regulated or adjudicated independent of religious influence.

Amanullah Khan’s article, ‘Islamic Philosophy and Medical Ethics’,⁶⁹² draws attention to *Adab al-Tabib*.⁶⁹³ It reveals that since the early discovery of medicine,

⁶⁸⁹ Op. cit. MacKlin, 1990.

⁶⁹⁰ HeOnline (2000-2001) 16 Issue L & Med. p.262.

⁶⁹¹ *Encyclopaedia of Bioethics*, 3rd ed., s.v. ‘Human Dignity’ defines human dignity as ‘an attribute of all human beings that establishes their great significance and worth’.

⁶⁹² <http://members.tripod.com/ppim/page1031.htm> (Accessed 31st March, 2010).

Islamic physicians took over the defensive responsibilities of medical treatments by occupying a forefront place of criticism with due caution and attention. In return, bioethics, 'a quasi-social science',⁶⁹⁴ has offered solutions to the ethical and moral arguments which arose during the early days of Muslim medical and biological scientific developments. This practice of caution and a knack of arguing against medical ethics within the arcades of religious cultural systems is still followed as a contest between theology safeguarding against unilateral scientific advancement, without producing any encouraging or positive results as to 'what are the right and the wrong, the good and the bad set of behaviour in a given circumstance'.^{695, 696}

Admittedly, medical ethics are derived from religiously traditional philosophical ideals, but their global universality has never been considered either necessary or mundane.⁶⁹⁷ It equally follows that infertile Muslim couples living in Western secular states may not follow the same compulsions against infertility as are prevalent in Middle Eastern areas.⁶⁹⁸ Serour draws a distinction between the three major religions, greatly influencing behaviours, attitudes and policy making. It has never been ethically considered necessary that infertile Muslim couples living in secular countries should follow the same practice as in Middle Eastern countries.⁶⁹⁹

In summary, what has been achieved scientifically often awaits ethical, moral and spiritual correlation. This long wait may result in infertile Muslim couples losing confidence in ever accomplishing their desires of having their own child within the guidance of religious beliefs and convictions.⁷⁰⁰ The scientific encounters with

⁶⁹³ Ishaq ibn Ali Al-Ruhawi was born in Ruha, a city in north western Iraq, today known as Urfa. Around 1200 AD he wrote the book, *Adab Al-Tabib*, the "Conduct of a Physician", which is a classic in the annals of medical ethics.

⁶⁹⁴ Op. cit. Askoy and Tenik, 2002.

⁶⁹⁵ Ibid.

⁶⁹⁶ Ibid.

⁶⁹⁷ Op. cit. Serour, 1994.

⁶⁹⁸ Op. cit. Serour *et al.*, 1999.

⁶⁹⁹ Serour, G. I., 2000. Ethical consideration of assisted reproductive technologies: a Middle Eastern perspective. *Middle East Fertility and Sterility Journal*, 5: 13-18.

⁷⁰⁰ One of the most extensive works dealing with ethics was written by Ishaq ibn Ali al-luhawi, a Christian who embraced Islam. He also wrote extensively on Galen. His book, *Adab al-Tabib* (Ethics of a Physician) is an extensive work. It consists of 112 folios with 17 lines per page. This was found in Suleymaniye Kitabhane. Its English translation appears in *The Transactions of the American*

theological steadfastness behaviour are somehow beginning to have their effect due to the significant replacement of homogenous and traditional societies with multicultural and multi-faith societies on account of easily accessible travel facilities. This change in the existing societies' set up is also giving birth to a new set of ethical and moral principles. The old adage of Muslim physicians that 'necessity overrides prohibition',⁷⁰¹ may soon have its turn in deciding the fate of infertile Muslim couples. Dr. Chandra Muzaffar issues a note of caution that, "Before we examine the significance of this resistance it is important to clarify that not everything that passes off as resistance is praiseworthy. Blind, insane rejection of everything Western in the name of resistance is foolish."⁷⁰² He further elaborates by stating: "I sit on a man's back choking him and making him carry me and yet assure myself and others that I'm sorry for him and wish to lighten his load by all possible means – except by getting off his back."

Principles of ethical justice quite often venture into medical health care areas to safeguard human reproductive treatments on the assumption that scarcity of resources may cause a "collision between the principle of justice and equity".⁷⁰³ The intrusion is basically to afford the freedom of action and the right of access to healthcare services on an equitable basis and it disregards any factor that some religious impediments may already apply to restrict the procedure of reproductive treatment. The invocation of justice implies the necessity of fair and equitable treatment in the light of what is due or owed to persons.⁷⁰⁴ However, the principles of justice,^{705, 706} the paramount teaching of Islam, cannot become one of the pleas

Philosophical Society, Vol. 57, part 3, 1967. Islamic philosophy served as a basis for defining and finding solutions to the ethical and moral problems facing physicians. The translator of this work, Martin Levy, in his preface, writes: "in addition, the contents of this world are remarkable in their delineation of the manner in which Muslim (and to a lesser extent, Christian) religious ideas were made to harmonize with the older science and ethics of the Greeks in particular."

⁷⁰¹ Islamic Code of Medical Ethics.

⁷⁰² Muzaffar, C., 2005. *Living in a Multi-civilisational world: The Politics and Civilisation*. Available at: www.musliminstitute.org/article_list.php?cat_id=111.

⁷⁰³ Serour, G. I., 1997b. Islamic development in bioethics. In: B. A. Lustig, ed., *Bioethics Yearbook 1997*. The Netherlands: Baylor College of Medicine Kluwer Academic Publishers.

⁷⁰⁴ Beauchamp, T. L. and Childress, J. F., 1994. *Principles of Biomedical Ethics*. 4th edn. New York: Oxford University Press.

⁷⁰⁵ Qur'an: *Al-Hujrat*, 49:9.

for infertile Muslim couples to alleviate infertility when Islamic scholars have not resolved the religious causes of such a demand.

Serour pursues the argument further, stating that: ‘Muslim ethics is a systematic reflection from a theological perspective, on both moral actions and practices of those in the Muslim community’,⁷⁰⁷ leading human reproductive technologies to an ethically and morally justifiable conclusion. In addition, according to Abdel-Salam, “It is well known that religious teachings are of influence in correcting the behaviour of the faithful and have tangible effects in pious societies.”⁷⁰⁸ In view of the distinct arguments of Serour and Abdel-Salam, modern human reproductive technologies may be shaped into an encouraging matter of discretion where there is no apparent justifiable guidance.

Lineage and Adoption

There is only one significant reference to lineage⁷⁰⁹ in the Qur’an: “It is He Who has created man from water: then has He established relationships of lineage and marriage: for your Lord has power [over all things].”⁷¹⁰

On the face of it, a straightforward interpretation would mean that the revelation is of social importance rather than a religious or spiritual obligation. The formulation of Shari’ah law, which enlarges upon the principle of lineage, is basically a ‘work of

⁷⁰⁶ Aristotle, N., 1941b. ‘Ethics’, Book 5. In: R. McKeon, ed., *The Basic Works of Aristotle*. New York: Random House; Aristotle, N., 1941a. ‘Politics’, Book 3. In: R. McKeon, ed., *The Basic Works of Aristotle*. New York: Random House, 1941.

⁷⁰⁷ Op. cit. Serour, 1993b.

⁷⁰⁸ Abdel-Salam, G., 1991. Legal Aspects of Family Planning. In: Serour and Omran, eds., *Proceedings of the First International Conference on Bioethics in Human Reproduction Research in the Muslim World*, 118-33.

⁷⁰⁹ Lineage (*al-Nasab and al-Nasl*). *Al-Nasab* is a noun formed from the Arabic verbal root *nasaba*, which means ‘to relate’, ‘to trace ancestry’, or ‘to attribute’. The other word *al-Nasl* is also a noun, formed from the Arabic verbal root *nasala*, meaning ‘to procreate’, ‘to sire’, and ‘to beget’. It means ‘descendants’, ‘offspring’ and ‘progeny’ and refers to the opposite of *al-Nasab*, i.e. one’s descendants, from children to grandchildren and so on.

⁷¹⁰ Qur’an 25:54.

human intellect’;⁷¹¹ it is, therefore, “essentially the ways of reading the Qur’an that distinguish the various trends of thought among Muslims”.⁷¹²

It is difficult for early interpretations of the Qur’anic allegorical verses to fall in line with modern developments of human reproductive technologies. It may not be a bad idea to review and reconcile them with these and to recognise the medical successes brought about by the changing times. For example, ovum, sperm and embryo donation came on the horizon only a few decades ago. It may be beneficial to shape a more liberal form of Shari’ah law taking these into consideration; for example, ‘not treating others in a way one oneself would not like to be treated’.⁷¹³

Broadly speaking, ‘lineage through marriage’ implies that the personal relationship that exists between a husband and wife, and their child, is an extension of this relationship. After the death of the father, the child represents a continuation of the father’s existence as an embodiment of his immortality.⁷¹⁴ From an Islamic point of view, Ibn. Al-Arabi said:

“Lineage is an expression referring to the mixture of fluids between male and female from a legal point of view. However, if this union [between male and female] occurs through disobedience (fornication) then the resulting child is not considered a part of a person’s true lineage. ...”⁷¹⁵

It further opens up the argument that if in Islam it is not permissible for a man to deny the birth of his child through a lawful wedded wife, it is also *haram* for him to claim fatherhood of a child of whom he is not the natural father. These two principles are relevant to the principle of ‘*tabanna*’ (‘to make one’s son’) and the principle of ‘*mutabanna*’ (‘the boy would become like a son to him’). The relationship through ‘*tabanna*’ and ‘*mutabanna*’ was widespread in Arab society

⁷¹¹ Op. cit. Ramadan, 2004, p.34.

⁷¹² Ibid. p.22

⁷¹³ Roald, A. S., IMER, Malmo University, Malmo, Sweden, reviewing Ramadan, 2004.

⁷¹⁴ ‘The Relationship Between Parents and Children’, www.witness-poioneer.org/vil/Books/Q_LP/ch3s6p1.htm.

⁷¹⁵ Dimitrius, Sam, Shamoun., Islamic Scholarship on the issue of Incest and Sodomy. <http://www.answering-islam.org/Shamoun/incest.htm> (Accessed August, 2012).

before the inception of Islam, until the ‘relationship of lineage’ was revealed in the Qur’an. This line of logical persuasions supports the argument that the interpretation of lineage is professed as a social concept rather than a spiritual stipulation of divine revelations. The relationship of lineage was basically enforced to avoid wrongful marriage between brother and sister or close relatives.⁷¹⁶

Insofar as adoption is concerned, the Qur’anic verse reveals that:

“... Nor has He made your adopted sons your [real] sons; that is simply a saying of your mouths. But Allah speaks the truth, and He guides to the [right way]. Call them by [the names of] their fathers; that is more just in the sight of Allah. But if you do not know their fathers, they are your brothers-in-faith and your wards.”⁷¹⁷

The above Qur’anic verse traces its history to when Prophet Mohammad himself adopted Zaid bin Harithah.⁷¹⁸ It gave rise to anger on the grounds that an intruder in the family would deprive the real members of the family from their legitimate right of inheritance. Prior to the inception of Islam, the son would receive inheritance from his father’s estate and also from his mother’s estate.⁷¹⁹ This was based on the principle that “the mother’s maternity lies in her body, while the father’s paternity has nothing to do with his body or the level of suffering”.⁷²⁰ Furthermore, it was “not prohibited in Islam to adopt female lineage, in case of social norms changes”.⁷²¹ It is, therefore, the above Qur’anic verse which abolished the *jahiliya* system of lineage, regardless of any consequences ensuing therefrom.

⁷¹⁶ Op. cit. Fadel, 2002-2003.

⁷¹⁷ Qur’an 33:4-5.

⁷¹⁸ Zaid bin Harithah was captured during one of the raids on his tribe during the *jahiliyyah* period. He was brought by Hakim bin Hizam to his aunt Khadijah, who presented Zaid bin Harithah to Prophet Mohammad. When Zaid’s father came to know where Zaid was living, he came to collect him. The Prophet Mohammad gave him a choice and he chose to stay with the Prophet Mohammad. The Prophet then set him free and adopted him as his son in the presence of others, and he was called Zaid ibn Muhammad thereafter.

⁷¹⁹ Sayyad Muhammad, Hussein, Fadlallah, ‘Women in the Islamic Social System’. <http://english.bayynat.org.lb/womenfamily/women.htm>.

⁷²⁰ Ibid.

⁷²¹ Ibid.

All these pre-Islamic historical lineage and adoption customs and traditions point in one direction; the ‘relationship of lineage’ is a social rather than a spiritual or legal issue.⁷²² Interpretations of Qur’anic allegorical verses should not be either specific or mandatory directives for all of time. Instead, these should be appraised frequently by applying *ijtihad* (reasoning), logistic or otherwise,⁷²³ with regard to specific issues of a given time. The principle of *ijtihad* invites *Qiyas* (analogical reasoning), *Istihsan*⁷²⁴ (juristic analysis), *maslahah Mursalah*⁷²⁵ (public interest), *Sadd al-Dharai* (blocking the means), *adat and Urf* (customary practices), and finally *istishab* (presumption of continuity) to resolve or review the given interpretation of the issue in hand.

Whenever Islamic religious scholars have had the opportunity to appraise Islamic *asul al fiqhah* in relation to scientific reproductive advancements within secular societies, they seem to be confused with the wide gap between Shari’ah law and secular cultural systems. Thus, they became hesitant to reconcile modern scientific advances with existing Islamic cultural traditions. Although, according to Prof. Tariq Ramadan, “[t]here is a great temptation to use these notions incoherently, chaotically, or only selectively, without fully grasping the whole philosophical legal corpus and consequently to become detached from global progress.”⁷²⁶

Prof. Ramadan recognises that, for the last few decades, Islamic religious scholars have become overwhelmed by the sudden progress of the industrialised West. They found it necessary to implement a call for new *ijtihad*, giving rise to the formulation of ‘innovative *fatwas*’. They do not seem to appreciate “even concerning this demand with the more general fundamentals of Islam concerning *tawhid*. ...”⁷²⁷

⁷²² Fadlullah, S. M. H., n.d. *Women in the Islamic Social System*. Available at: www.Bayynat.org (Accessed 26th June, 2012).

⁷²³ Council on Islamic Education. Available at: <http://www.cie.org/resources/hbglossary-atoi.htm> (Accessed 10th October, 2002).

⁷²⁴ *Istihsan* is to facilitate the jurists to make use of discretion when interpreting law on a given situation or topic.

⁷²⁵ Public interest must pertain to the five fundamental objectives of Islam; i.e. life, faith, intellect, property and posterity. Lineage maintains posterity by directing towards the family unit.

⁷²⁶ Ramadan, T., 2006. *The Way (Al-Sharia) of Islam*. In: M. Kamrava, ed., *The New Voices of Islam*. Berkeley, Los Angeles: University of California Press, p.87.

⁷²⁷ Ramadan, Tariq. ‘The Way (Al-Sharia) of Islam’, ed. Mehran Kamrava, *The New Voices of Islam* (2006). University of California Press, Berkeley, Los Angeles, p.87.

Such aimless endeavours on the part of Islamic religious scholars seldom help in finding a common denominator to co-ordinate mutual understandings or to narrow down constrained limitations between Shari'ah and secular cultural systems. Instead, such an impaired vision can easily give rise to 'hodge-podge *fatwas*' and:

“it is built on a dualistic vision of two universes that do not mingle and that make compromises at their boundaries, or in the limited area where they intersect, it assumes that it is Muslims, being in the numerical minority, who must adapt by force of circumstance.”⁷²⁸

It is devoid of any sensitive obligation of integrating, contributing, or even diminishing the role of being strangers in a secular society's cultural systems.

In reality, Ramadan facilitates the argument by stating that:

“The universality of the message of Islam and the principle of integration that is at its heart invite us to integrate everything that is positive, to move forward selectively, and to act from within, as full members of our society, in order to promote what is good, to work against injustices and discrimination, and to develop alternatives that do not restrict *fiqh* in the West in thinking of itself as on the defensive, moving in a protective fashion, giving the name of 'exemption' (*rukhas*) to what in the long term could take on the colour of surrender.”⁷²⁹

The argument is further supported by Yusuf al-Qardawi. The European Council of Fatwas and Research,⁷³⁰ when reviewing the research and discussion of *fiqh al-aqalliyat*, encourages Muslims that while adhering to their religious beliefs and convictions, they should remain law-abiding citizens in a secular society.⁷³¹ By adhering to one's religious beliefs and convictions and at the same time by being law-abiding citizens in a secular society, does not mean that one has become 'non-

⁷²⁸ Ibid. p.87.

⁷²⁹ Ibid. p.89.

⁷³⁰ *Fatwas* of the European Council for Fatwas and Research, 2001. English translation, Islamic Foundation of Dublin.

⁷³¹ Yusuf al-Qardawi, 2001. *Fi fiqh al-aqalliyat al-muslima* (On law and the jurisprudence of Muslim Minorities). Cairo: Dar al-Shuruq.

Islamic'. On the contrary, it can be an opportunity to discuss and collate the earlier sciences revealed in the Qur'an (*ulum al-Qur'an*), portrayed through Islamic tradition (*ulum al-hadith*), its creed (*ilm al-aqida*), more specifically through (*ilm usul al-fiqh*), giving rise to mutually beneficial understandings of the innovative sciences of human reproductive technologies.

There can hardly be any constructive, mutually beneficial contribution or achievement by remaining marginal within a secular society. It is by becoming the central issue and by accepting this role that unanimity of purpose is established. By establishing a position of sharing the common responsibilities of a secular society, this will not imply a compromise of the fundamental principles of Islamic *fiqh*. On the contrary, by being a second pole to the tent, this will give rise to additional sources of mutually beneficial contributions, and indeed conscious contradictions portraying a realistically healthy society. Equally, due to the unavoidable presence of religious people of various sects in secular society, it is evidently impossible for a secular society to exist without a religious presence and its influence. Their presence also signifies "the need of Him". It is an impetus to modern accelerations of scientific achievements in the vicinity of religious conscience.

In the modern day and age, if the distinction of 'lineage' is an important factor, it can only be as a pretence of a safeguard against sexual misdemeanour. It can further be the criterion to promote social balance for the welfare of society. In the early days of Islam the absence of the implementation of lineage necessitated cruel social reprimands. The social implementation of lineage became an important part of constructing a just society. The importance of 'lineage' helped to wipe away the element of *zina*, adultery and unseemly incidents of marriage customs prevalent during the *jahiliya* period. Thus, lineage remains a demanding expression of social heritage, not a spiritual bondage.

“Jurists, those folks in the Islamic world responsible for developing law, need to apply a healthy dose of critical thinking to their job as they go about the

business of forming a just society – one that moves in the direction of the Word of God.”⁷³²

Lineage and identity also fall into social argument to be devised in accordance with the changes brought about by modern times. It is justifiable only to review and change existing Islamic traditional social cultural systems and not the scriptural tenets, the core of the Islamic faith. The decisions thus undertaken must be the result of a comprehensive appraisal, deliberation and determination. Abu-zaid notes that some modern Islamic religious scholars, such as Muhammad Abduh (1948-1905), Taha Hussein (1889-1973) and Ali Abdel Raziq (1887-1966), are ‘attacking the thoughtless imitation of the past as a way to move Islamic culture forward’.⁷³³ In other words, drawing a distinct comparison between existing piles of archival interpretations against modern-day dimensions of human reproductive developments would impliedly mean restricting progress. Islamic religious scholars rely mainly on Qur’anic verses such as verse 16:72. Their interpretation of Qur’anic verses imposes an ordinate belief that any deviation from the assigned interpretations can create a traditionally inharmonious society. To reiterate, the interpretation of lineage is nothing more than a stumbling block against making human reproductive technologies easier to access for infertile Muslim couples. The union of marriage denotes a primary and strong recommendation in the Islamic faith, encouraging lineage in the social atmosphere.

Prior to the inception of Islam, it was common amongst Arab tribes to boast about their lineage and ancestral relationships. They were accustomed to attach an honourable status to manifest their respective social preference over other Arab families. “The Arabs used to change the lineage of their adopted sons to their own lineage.”⁷³⁴ In addition, “Ibn Umar reports that when Prophet Mohammad freed Zayed ibn Harithah and adopted him, people used to refer to him as Zayd ibn

⁷³² Abu-Zaid, N., 2006. The Nexus of Theory and Practice. In: M. Kamrava, ed. *The New Voices of Islam*, p.155.

⁷³³ Ibid. p.168.

⁷³⁴ Dr. Abu Ameenah Bilal Philips. Excerpt from Tafseer Surat Al-Hujuraat. Available at: www.zawaj.com/articles/naming.html (Accessed 8th July 2009).

Muhammed until the Qur'anic verse ordained.”⁷³⁵ “Call them by [the name of] of their fathers, that is more just in the sight of Allah. ...”⁷³⁶

The authentic example of attaching an honourable status to adopted sons is given in the words exchanged between Prophet Mohammad and Jowaibir when the Prophet Mohammad went to see the Companions of the Suffa (*Ashab al-Suffa*):⁷³⁷

“O Jowaibir! God has changed the individual’s worth through Islam. Many people were high-placed in pre-Islamic society and Islam brought them down. Many were despised non-entities and Islam bestowed them with honour and high rank and brought them up. Islam abolished the un-Islamic discrimination and pride of lineage. Now all people irrespective of their colour and origin are equal. Nobody has superiority over others but through piety and obedience to Allah. Among the Muslims, only that person would be higher than you whose virtues and deeds are better than you. Now do as I tell you.”⁷³⁸

Thereafter, the practice of lineage and relationship were maintained as a social and cultural system.

⁷³⁵ Ibid.

⁷³⁶ Qur’an, *Al-Ahzab* 33:5.

⁷³⁷ Ashab al-Suffa is a term, composed of the words “*ashab*” meaning “masters, friends” and “*suffa*” meaning “veranda, shed, porch” in Arabic. The term is a generic name given to the companions who stayed in the arbour next to the *masjid* of the Prophet in Medina after the Hijra to Medina and studied religious sciences there.

Those seeking shelter in Suffa constituted people who migrated from different places of the Arabic peninsula where they could not conduct their lives in an Islamic manner. These students, subjected to a regular learning, were called “*ashab al-suffa*” or “*ahl al-suffa*” because the places allotted to them were named as “*suffa*”.

The number of students sometimes reached 400 together with the non-residing people; among these were well-known companions such as Talha ibn Ubaydullah, Abu Said al-Hudri, Abu Hurairah, Abu Zar al-Gifari, Bilal al-Habashi (Bilal the Ethiopian or Bilal ibn Ribah), Abdullah ibn Umar, Abdullah ibn Mas’ud and Bara ibn Malik. Three companions narrated the most number of hadiths, namely Abu Hurairah, Abdullah ibn Umar and Abu Said al-Hudri, and were among the disciples of the Suffa Brotherhood, which demonstrates their close ties to the Prophet.

Briefly, the *Suffa* was a model and a pioneer home of education in the history of Islam. Some *Suffa*-dwellers devoted themselves to a spiritual-moral life completely, so they became the pioneers of ascetic life and had a tendency towards Islamic mysticism.

⁷³⁸ These words were exchanged one day between the Prophet Mohammad and Jowaibir when the Prophet Mohammad came to see the Companions on the Suffa (*Ashab al-Suffa*). See: <http://www.ezsoftech.com/stories/anecdotes1.asp> (Accessed 24th February, 2012).

When considering how the early medical references on lineage were interpreted, how the exchange and incorporation of ideas flourished,⁷³⁹ it becomes obvious that with the arrival of modern human reproductive successes, that pattern can neither last any longer nor can a universal harmonising and cohesive society remain relevant indefinitely. These dynamic forces of Islam had played a major part in bringing together the timely regulated political, social and moral cultural traditions,⁷⁴⁰ which must be reviewed and reconsidered in accordance with the changes taking place in the world. “The question of the compatibility of Islam with modernity has been a point of contention not only among the Muslims and the West but also among Muslims themselves”,⁷⁴¹ especially when a DNA test cannot prove lawful intercourse as an authentic proof of lineage from a legal perspective.⁷⁴² It does not fulfil the criterion that Muslims must descend from one set of parents, and hold unique personalities as persons. Besides, in Islam, lineage in superior social classes is an irrelevant consideration of preferring certain people over others. In a secular society, the issue of lineage is of no greater value both as a social class criterion with respect to the importance for a child being born through the sperm of the father and ovum of the mother alone. In Western societies lineage is further losing its significance when the scientists are at the verge of creating human sperm stem cells.⁷⁴³

It can further be argued that the ‘relationship of lineage’ as an allegorical directive is neither fully explained nor interpreted, to satisfy the needs and demands of human reproductive technology developments of the present time. On the face of it, the advancement of modern human reproductive innovations has established a new horizon. However, these successful scientific reproductive developments do pose

⁷³⁹ Al-Hatchery, S. I. A., 1981. *The Muslim Doctor: Duties and Responsibilities*. Islamic Medical Association Wamy-Dammam.

⁷⁴⁰ Islam is often visualised as exemplary in its political, civilisational and demographic advancements. The growth of the Muslim population in Europe and America has resulted in Islam becoming the second largest religion in Germany, France and Italy, as well as the third largest in Britain and America.

⁷⁴¹ Esposito, J. L. and Voll, J. O., 2001. *Makers of Contemporary Islam*. New York: Oxford University Press USA.

⁷⁴² *The First International Convention of Islamic Medical Practitioners*, 1981. Islamic Federation of Medical Studies.

⁷⁴³ Alleyne, R., 2009. British scientists create human sperm. *The Daily Telegraph*, 8th July.

worrying questions for Islamic religious scholars, who of their own volition may find it difficult to co-ordinate these with the established existing pattern of Islamic social cultural systems.⁷⁴⁴ Those Muslims who have opted to settle in a secular society but adhere to their own religious beliefs and convictions, are naturally confused when confronted with a number of difficult questions such as the interpretation of lineage principles, for which they may seek guidance from Islamic religious scholars in conformity with Shari'ah law. They may seldom visualise themselves as the previously known 'Islam and the West', which is now changing to 'Islam in the West'.⁷⁴⁵

Harmonious relations amongst cultural traditional systems can only be achieved on the basis of certain basic principles, through well-rehearsed, discussed and commonly agreed rules of lineage interpretation. In Islam, the durability of existing established cultural traditional systems, which brought about discipline and harmony in the past, has only been achieved by assigning correct and just meanings when interpreting the Qur'an, Sunnah and rules of *fiqh*, and their interpretations were generally accepted within Muslim society.⁷⁴⁶ It is now equally inevitable for present Islamic religious scholars to maintain this correlation with changing medical innovations to fulfil the demands of the time by reviewing the existing principles of Shari'ah law.

Apprehending the hesitancy on the part of Islamic religious scholars, Shahid Athar has stated in rather a reprimanding tone that:

“Muslim masses are ignorant and naïve, behaving like the bird which, fearful of its enemies, buries its head under the sand, thinking that it is safe. Muslim groups are split into two groups. One group is educated and modernised and accepts anything that serves science and humanity, irrespective of religious or moral laws that might be broken. The other group of so-called Islamic scholars have knowledge of Islam, but not of medical sciences. They are quick to give

⁷⁴⁴ *Juristic Decisions on Contemporary Issues*, 2009. Islamic Fiqh Academy, India.

⁷⁴⁵ *Op. cit.* Espisoto and Burgat, 2003.

⁷⁴⁶ Islamic Fiqh Academy, 2009. *Aims and objectives*. Available at: <http://www.ezsoftech.com/stories/anecdotes1.asp> (Accessed 24th February, 2012).

their opinion on everything. However, both groups should be reminded that Islam is not a religion of personal opinions.”⁷⁴⁷

Shahid Athar further states: “Muslims living in an advanced Western society cannot stay aloof from the issues surrounding them. All factors affecting non-Muslims, sooner or later, directly or indirectly, will affect them too.”⁷⁴⁸

Having examined the ‘relationship of lineage’ and its consequences in the case of infertility from the Islamic religious scholars’ point of view, it is appropriate to appraise it further within the social context of infertility. Infertility is defined as the failure to produce a viable pregnancy within one year of regular sexual intercourse, without the use of any form of contraception. According to Islam, the creation of life is the exclusive function of Allah. “To Allah belongs the dominion of the heaven and the earth. He creates what He wills [and plans]. He bestows [children] male or female according to His will [and plan].”⁷⁴⁹ “He bestows male or female children and He leaves barren whom He wills: for He is full of knowledge and power.”⁷⁵⁰

The above Qur’anic verses do not make it imperative for infertile Muslim couples to seek redemption exclusively by praying. It is a fundamental Islamic belief that in case of hardship one should have recourse by all lawful means to solve the problem, having always absolute trust in God’s benevolence. It is therefore one of Prophet Mohammad’s Hadiths that: “For every disease God created a cure except senility, meaning death. So progeny of Adam seek cure for all your ailments!”⁷⁵¹ Modern human reproductive technologies provide adequate alleviation for infertility at the present time. If the desire of infertile couples of having a child is solemn, the situation embraces the principle of *dharura*, wherein the rules become somewhat relaxed. However, some Islamic religious scholars have stipulated a condition that one should be treated by someone of the same gender. Hence, a female should be

⁷⁴⁷ Athar, S. (year not given). *Islamic Perspective In Medical Ethics*. [online] Available at: www.islam-usa.com/im18.html.

⁷⁴⁸ Ibid.

⁷⁴⁹ Qur’an, *Ash-Shura* 42:49.

⁷⁵⁰ Qur’an 42: 49-50.

⁷⁵¹ Op. cit. *Mishkat Al Masabih*, 1975.

treated by a female doctor at the time of obtaining her eggs and also when inserting the fertilised ovum into her womb, whilst the husband should be treated by a male doctor at the time of acquiring his sperm.⁷⁵²

The Council of the Islamic Fiqh Academy's third session held in Amman, Hashemite Kingdom of Jordan, in October, 1986, reviewed studies on the subject and after investigation it became evident to the Council that there were seven known methods for artificial insemination being practised today. They came to the conclusion that the first five methods were forbidden in accordance with Islamic law:

1. Fertilisation taking place between sperm taken from the husband and eggs taken from a woman who is not his wife, and then the fertilised ovum being implanted into the womb of the wife.
2. Fertilisation taking place between sperm taken from a man who is not the husband and eggs taken from the wife, and the fertilised ovum being implanted into the womb of the wife.
3. Fertilisation taking place *in vitro* between sperm and eggs taken from the spouses, and then the fertilised ovum being implanted into the womb of a volunteer woman (i.e. surrogate mother).
4. Fertilisation taking place *in vitro* between the sperm of a man and eggs of a woman who are both strangers to one another, and then the fertilised ovum being implanted into the womb of another man's wife.
5. Fertilisation taking place *in vitro* between sperm and eggs taken from the spouses, and then the fertilised ovum being implanted into the womb of the husband's other wife.

However, there was no objection to resorting to two other methods in cases of necessity, provided that all the required precautions are taken:

- a. Sperm from the husband and eggs from the wife are taken and fertilised *in vitro*, and then the fertilised ovum is implanted into the womb of the wife.

⁷⁵² The Council of the Islamic Fiqh Academy, third session, Amman, Hashemite Kingdom of Jordan, held 8th to 13th Safar 1407 H (11th to 16th October, 1986).

- b. Artificial insemination, by taking sperm from the husband and inserting it in the appropriate position within his wife's womb for fertilisation.⁷⁵³

Without any distinct outline of religious perimeters, infertile Muslim couples are caught with no satisfactorily defined objectives. In contrast, lineage still remains a spiritual duty rather than a social cultural system.

⁷⁵³ Qararat wa tawsiyyat Majma' al-Fiqh al-Islami, pp.34-35.

Chapter Seven

Muslim Women's Struggle for Emancipation

This chapter focuses on two main issues which are essential to further the argument of this thesis: the suppression of Muslim women under patriarchal domination and the deprivation of their fundamental human rights.

Firstly, if gender and patriarchy are to become an eminent part of the ongoing discussion concerning infertile Muslim couples, then the unremitting advancement of the suppression of a Muslim woman under the “patriarchal regime”⁷⁵⁴ is an important factor to discuss critically. A Muslim woman, primarily by virtue of marriage, is unduly influenced to uphold the masculinity of her husband at all cost.⁷⁵⁵ She has been ruefully forced to take upon herself the procreative deficiency⁷⁵⁶ from which she does not suffer and thus to barter her good health in exchange for her husband's genuine infertility. Muslim men have snatched this power structure. Insofar as they are concerned, they are fertile as long as they are able to ejaculate and this is presumed to be enough proof of their virility. In other words, when a man is able to ejaculate but the woman does not conceive, the problems derive from the nurturing and carrying ability of the woman and the female body has rejected the seed.⁷⁵⁷

⁷⁵⁴ Op.cit. Inhorn, 2003b.

⁷⁵⁵ Deniz Kandiyoti, in her article ‘Islam and Patriarchy: A Comparative Perspective’, states that: “Under classic patriarchy, girls are given away in marriage at a very young age into households headed by their husband's father. There they are subordinate not only to all the men but also to the more senior women, especially their mothers-in-law. The extent to which this represents a total break with their own kin group, and consequent isolation and hardship, varies in relation to the degree of endogamy in marriage practices.”

⁷⁵⁶ Ouzgane, L., 2003. Islamic Masculinities. *Men and Masculinities*, 5 (3): 231-235.

⁷⁵⁷ Yüksel, E., Siemann, A. and Kentenich, H., 1996. Kinderlosigkeit türkischer Paare in der migration – multifaktorielles Problem (Childlessness of Turkish couples in migration settings – a multifactor problem). *Geburtshilfe und Frauenheilkunde*, 56: 188-190; Delaney, C., 1991. *The seed and the soil. Gender and cosmology in Turkish village society*. Berkeley, CA: University of California Press.

In Marcia Inhorn's opinion, "Male infertility is a major global reproductive health problem, contributing to more than half of all cases of infertility worldwide. Yet women typically bear the social burden of childlessness when their husbands are infertile."⁷⁵⁸ Women in childless marriages typically experience procreative blame, even when male infertility is socially acknowledged. Inhorn implicates patriarchy dominance which accompanies infertility, particularly in Middle Eastern countries.⁷⁵⁹

Thus, a Muslim woman's dilemma redounds in multiple ways and she ultimately pays the price for male infertility under conditions of Middle Eastern patriarchy.⁷⁶⁰ She, in spite of having a clean bill of health, continues to be condemned as an infertile person by her husband, relatives, and neighbours; "like a tree without dates".⁷⁶¹ Thus, the wives of infertile men must endure the social ostracism that comes with this stigmatising condition as well as the psychological and physical toll of medical treatment for conditions located outside their own bodies.⁷⁶² In addition, they are required to act as blind and deaf, completely incarcerating the feelings of self-identity, even within their own culture,⁷⁶³ against their own experiences, their own desires and their own physical selves.⁷⁶⁴ They are ushered into a mental confinement without reprieve.

Within these inflicted expressions of infertility, Muslim women endure acute forms of anxiety, depression, frustration and grief.⁷⁶⁵ As a result, the lack of understanding on the part of Muslim men produces a feeling of insecurity, giving rise to the

⁷⁵⁸ Op. cit. Inhorn, 2003b.

⁷⁵⁹ Ibid.

⁷⁶⁰ Abbey, A., Andrews, F. M. and Halman, L. J., 1991. Gender's role in responses to infertility. *Psychology of Women Quarterly*, 15: 295-316; Greil, A. L., Leitko, T. A. and Porter, K. L., 1988. Infertility: His and hers. *Gender & Society*, 2: 172-199.

⁷⁶¹ Op. cit. Inhorn, 2003b, p.247.

⁷⁶² Ibid. p.249.

⁷⁶³ Ghaussy, S., 1994. A Stepmother Tongue: "Feminine Writing" in Assia Djebar's *Fantasia*. *World Literature Today*, 68 (3): 457-462.

⁷⁶⁴ Ibid. p.460.

⁷⁶⁵ Elshtain, J. B., 1981. *Public man, private woman*. Princeton, NJ: Princeton University Press; Tong, R., 1989. *Feminist thought: A comprehensive introduction*. Boulder, CO: Westview.

ultimate threat of marital duress, ending in divorce.⁷⁶⁶ The Middle Eastern Studies Association has organised numerous assembly sessions on “Women in Islam”, but no session has been organised to discuss “Men in Islam”.⁷⁶⁷ It is, therefore, senior male members of the family who have complete authority over young women’s subordination. According to Gerami Shahin, “... a feminist framework provides the necessary tools for such demystification. A beginning step is the debunking of masculinity as normative in Islamic cultures.”⁷⁶⁸ It has the most misogynistic overtone.⁷⁶⁹

Abu-Zaid puts forward an argument that: “Under the guise of protecting women, we restrict their activities, a climate that perpetuates inequality between the sexes. Many Muslims are liberal and open-minded, but when it comes to the subject of women, they take refuge in an outdated ideology.”⁷⁷⁰ Leila Ahmad supports Abu-Zaid’s argument of Muslim women’s suppression by stating that during Islam’s inception, within a short period of time patriarchal anti-historical and anti-feminist dominance were in place⁷⁷¹ in the areas of marriage,⁷⁷² divorce,⁷⁷³ custody, maintenance and inheritance. It was never considered necessary to invoke the other universal social principles of Islam, such as, *dar al-Islam*⁷⁷⁴ and *dar al-harb*,⁷⁷⁵ with regard to

⁷⁶⁶ Inhorn, M. and Van Balen, F., eds., 2001. *Infertility around the globe: New thinking on childlessness, gender, and reproductive technologies*. Berkeley: University of California Press.

⁷⁶⁷ Op. cit. Ouzgane, 2003.

⁷⁶⁸ Gerami, S., 2003. Mullahs, Martyrs, and Men: Conceptualizing Masculinity in the Islamic Republic of Iran. *Men and Masculinities*, 5 (3): 257-295 (p.260).

⁷⁶⁹ Ibid. p.262.

⁷⁷⁰ Op. cit. Abu-Zaid, 2006, p.166.

⁷⁷¹ Mernissi, F., 1992. *La peur-modernité: Conflit Islam démocratie*. M. J. Lakeland, trans., *Islam and Democracy: Fear of the Modern World*. Paris: Albin Michel. pp.170-171.

⁷⁷² Muslim marriage is a contract not a sacrament. It is man’s responsibility to provide materially for his wife and to perform sexually. Under the principle of ‘*taslim nafsaha*’ she delivers herself to him, and ‘*tamkin nafsaha*’ puts herself at his disposal; the woman cannot refuse sex whenever the man wishes.

⁷⁷³ A Muslim man can divorce his wife by pronouncing three times ‘*tilaq*’ ‘*tilaq*’ ‘*tilaq*’, whereas a Muslim woman can only divorce for specified causes, as agreed by the judge in the Court.

⁷⁷⁴ *Dar al-Islam* is a term used by Muslim scholars to refer to those countries where Muslims can practise their religion freely. These are usually Islamic cultures wherein Muslims represent the majority of the population and are under government protection. Most *Dar al-Islam* areas are surrounded by other Islamic societies to ensure public protection.

considering the equality of Shari'ah law,⁷⁷⁶ especially to elevate women's inferior status within the family and the subordinate position established in Islamic cultural systems.

The steadfast and convincingly unperturbed patriarchal attitude on the part of Muslim men has done no more good than to invite befitted criticisms from people who used to profess that in Islam women are not discriminated. Muslim patriarchal authorities have unduly succeeded in discriminating against Muslim women with regards to their rights and lowering their status, without any cross-culture influence or any specific religious ordination in this direction. They often preach patriarchy and fervently believe that men are in charge, as the protectors, and maintainers of women, because 'Allah hath made the one to excel the other' and through the Qur'anic verse:

“Men are the protector and maintainers of women, because Allah has given the one more [strength] than the other, and because they support them from their means. Therefore, the righteous women are devoutly obedient, and guard in [the husband's] absence what Allah would have them guard. As to those women on whose part you fear disloyalty and ill-conduct, admonish them [first], [next], refuse to share their beds, [and last] beat them [lightly]; but if they return to obedience, seem not against them means [of annoyance]: for Allah is Most High, Great [above you all].”⁷⁷⁷

According to Amina Wadud,⁷⁷⁸ if there is any reference made by man being superior to woman then it may be on account of extending care, protection, and fulfilling the duties of providing shelter and expense, which is independent of human values. Human gender values, due to male patriarchal dominance, have been greatly unbalanced due to the unequal financial distribution between men and women. It is

⁷⁷⁵ *Dar al-Harb* refers to areas outside Muslim rule, as opposed to *Dar al-Islam*. The precise designations of such territories can vary widely. The lives and property of people of *Dar Al-Harb* are not protected.

⁷⁷⁶ Insofar as Islamic religious tenets and rules were concerned, there is an authoritative view that these are universal and address all mankind, regardless of a person's status, gender or religion.

⁷⁷⁷ Qur'an 4:34.

⁷⁷⁸ Wadud, A., 2006b. *Aishah's Legacy: The Struggle for Women's Rights within Islam*. In: M. Kamrava, ed., *The New Voices of Islam*. Berkeley, Los Angeles: University of California Press.

often speculated that if women had been the major source of family income, then would they also have superiority over men?⁷⁷⁹ Although women are gradually regaining their lost status by acquiring education and contributing a compatible source of service in society, they have not yet fully achieved responsibilities or superiority equal to men, even though they are “endeavouring to remove the fetters imposed by centuries of patriarchal interpretation and practice”.⁷⁸⁰ Perhaps this may remain due to the laws of nature, as some people will remain superior to others regardless of their assumed space and duties.

There is considerable controversy surrounding the interpretation of the above Qur’anic verse 4:34, mainly due to its meaning in Arabic as well as the rights and obligations that can be drawn from it. For example, Dahlia Eissa⁷⁸¹ refers to Al-Hibri⁷⁸² who “concludes that the verse merely describes the situation of women in seventh-century Arabia who were financially dependent on men, and in no way prescribes relations between men and women”. In such situations a man was given the responsibility, not privilege, of offering guidance or advice to a woman where he was more qualified in relation to a particular matter: for example, where a woman had little exposure in public life and had to make a decision in a commercial transaction. However, the woman is under no obligation to accept the guidance or advice of the man. Al-Hibri contends that her interpretation is based on traditional religious and linguistic sources and therefore does not depart from traditional interpretive methodologies. Her interpretation is that there is no command on men to financially maintain women and there is no command on women to obey men. Furthermore, the asymmetrical relationship between men and women in 7th-century Arabia is consistent with the descriptive nature of the verse; “when at one point it

⁷⁷⁹ Op. cit. Abu-Zaid, 2006, p.163.

⁷⁸⁰ Op. cit. Wadud, 2006b, p.204.

⁷⁸¹ Eissa, D., 1999. *Constructing the Notion of Male Superiority over Women in Islam*. Women Living Under Muslim Laws Occasional Paper No. 11. p.41.

⁷⁸² Aziza al-Hibri, 1997. Islam, Law and Custom: Redefining Muslim Women’s Rights. *American University International Law Review*, 12(1): 1-44.

became necessary to speak of a symmetrical responsibility for guidance and protection between men and women, the Qur'an did not hesitate".⁷⁸³

There is another Qur'anic verse which is often bypassed by Islamic religious scholars:

“And the believers, men and women, are protecting friends of one another; they enjoin the right and forbid the wrong, and they establish worship and they pay the poor-due, and they obey Allah and his messenger. As for these God will have mercy on them. Lo! God is Mighty, Wise.”⁷⁸⁴

“The fact that this Verse has largely been ignored in favour of an emphasis on Qur'anic verse 4:34, is an example of the selective emphasis the jurists have been prone to place unilaterally. Why is it that this Verse, which enjoins men and women to protect others and each other, is given little weight in jurists' discussions of women's status and relations between men and women?”⁷⁸⁵

Second is the denial of a Muslim woman's conjugal human rights, which forms an important part of her self-identity and an important ingredient of any woman's self-reflection. An early example of the influence of misogyny in Islam has been noted by Dahlia Eissa⁷⁸⁶ when quoting an example of Umar ibn al-Khattab's treatment of women. Umar ibn al-Khattab, the second Caliph, was known to be restrictive of women's freedom. He even attempted to limit the freedom of movement of the Prophet's wives after his death. In his opinion:

“Women are of three types: a modest, honest Muslim woman who helps her people live and will not ally herself with life against her people; another woman is a mere container for conceiving babies; and the third is a plague like lice with which Allah tests whoever He wills of His bondsmen.”⁷⁸⁷

⁷⁸³ Op. cit. Eissa, 1999.

⁷⁸⁴ Qur'an 9:71.

⁷⁸⁵ Op. cit. Eissa, 1999.

⁷⁸⁶ Ibid.

⁷⁸⁷ Ibid. Quoted Anas Ismail Abudawood, 1997. *Daleel Al-Saileen*. p.724.

The prejudices against women were construed into Islamic law. The early scholars misinterpreted the principle of lineage to avoid the right of inheritance to a biological child who may not claim real parenthood. Many theologians of non-Arab stock,⁷⁸⁸ who later developed and interpreted Shari'ah law, had egalitarian principles and the principles of Islamic jurisprudence were conveniently forgotten.⁷⁸⁹ "It was this 'legal and social vision of establishment Islam [that] gave precedence to women's obligations to be wives and mothers."⁷⁹⁰

Sait Yavus rightly points out that: "Islamic tradition on the one hand, is flexible enough to open venues for modern ways of life, and modernity, on the other, favours the principle that each individual has the right to choose any lifestyle that she thinks it as the best for herself."⁷⁹¹ In addition, from the inception of Islam, "The Qur'an immensely improved the status of the woman in several directions, but the most basic is the fact that the woman was given a fully-pledged personality".⁷⁹² According to Eissa, "Qur'an is the expression of the absolute authority of God".⁷⁹³ It is therefore highly desirable to accommodate the interpretations of Qur'anic verses in line with modern scientific developments. It is an attempt to unfold those concealed intentions of the allegorical expressions⁷⁹⁴ that have given Muslim women an inappropriate status.

⁷⁸⁸ Walther, W., 1993. *Women in Islam*. Trans. C. S. V. Salt. Princeton, NJ: Markus Weiner.

⁷⁸⁹ Tradition has it that Umm-Salmah said to the Prophet Mohammad, "O Messenger of God! The Qur'an speaks of men but does not speak of us, women." As a consequence, the Qur'an revealed: "For Muslim men and women – for believing men and women; the devout men and women; the truthful men and women; the patiently suffering men and women; the humble men and women; the almsgiving men and women; the fasting men and women, the men and women who guard their chastity; and the men and women who are exceedingly mindful of God – for them has Allah prepared forgiveness and great reward" (Al Ahzab, 33: 35).

⁷⁹⁰ Ahmed, L., 1992. *Women and Gender in Islam: Historical Roots of a Modern Debate*. New Haven, CT: Yale University Press. p.66.

⁷⁹¹ Said, Y., 2007. *Muslim in Islam: Muslim Perspective and Fethullah Gullen*. Fetullah Gulen Web Site.

⁷⁹² Op. cit. Rahman, 1979, p.38.

⁷⁹³ Op. cit. Eissa, 1999, p.3.

⁷⁹⁴ Weiss, B., 1978. Interpretation in Islamic Law: The Theory of Ijtihad. *American Journal of Comparative Law*, 26 (2): 199-212.

Historically, the undermining of the status of Muslim women began when Islam turned royalist during the Umayyad's dynasty.⁷⁹⁵ According to Abdullahi Ahmed An-Na'im,⁷⁹⁶ by the beginning of the 10th century the general consensus by the jurists of legal doctrines, virtually closed the door of *ijtihad* (to deduce solution by reasoning)⁷⁹⁷ by arguing that any "new decisions would be based on previously recorded determinations",⁷⁹⁸ and "the widely held assumption that women have been historically persecuted by all patriarchal cultures is, to a large extent, incontestably true".⁷⁹⁹ It became a reality and "the gender revolution was thereby aborted".⁸⁰⁰ The 'closure of the door of *Ijtihad*' is the primary reason why much of Islamic law appears so foreign when considered in a contemporary light. Majid⁸⁰¹ cites Leila Ahmed's predicament that:

"whether the religion is to be allowed to remain permanently locked into replicating the outer forms of the specific society into which it was revealed, or whether the true pursuit and fulfilment of the Islamic message entails, on the contrary, the gradual abandonment of laws necessary in its first age."⁸⁰²

Islamic scholars, sooner or later, have to make amends in recognising modern scientific developments which were non-existent during the early days of Islam. For example, modern human reproductive technologies, genetic changes and the DNA revolution are impelling examples in highlighting that "a practical solution has remained dauntingly elusive, especially as Islam evolved from an initial phase of

⁷⁹⁵ The Umayyad family (661-750) originally came from the city of Mecca. They resided in Damascus, the capital of their Caliphate. Umayyad Caliphate was the second of the four major Arab Caliphates after the death of the Prophet Mohammad.

⁷⁹⁶ An-Na'im Abdullahi, A., 2008. *Islam and the Secular State*. Cambridge, MA: Harvard University Press, p.15.

⁷⁹⁷ Hallaq, W. B., 1984. Was the Gate of Ijtihad Closed? *International Journal of Middle East Studies*, 16: 3-41. The scope of creative new thinking through Ijtihad was diminished on the assumption that Shari'ah had already been fully and exhaustively elaborated.

⁷⁹⁸ Elbayar, K., 2008. *Reclaiming Tradition in Islamic law in a Modern world*. [online] Available at: www.iar-gwu.org/node/23.

⁷⁹⁹ Anouar, M., 1998. The Politics of Feminism in Islam. *Signs*, 23 (2): 321-361.

⁸⁰⁰ Mazrui, A., 1993. Islam and the End of History. *American Journal of Islamic Social Sciences*, 10 (4): 512-535.

⁸⁰¹ Op. cit. Anouar, 1988, p.323.

⁸⁰² Op. cit. Ahmed, 1986, p.677.

tolerance to the gradual marginalisation of women and their enclosure in the dark world of theologically illegitimate patriarchy”.⁸⁰³ Deniz Kandiyoti, in her article ‘Women, Islam and the State’, has referred to a few suggestions that can be used to overcome this hurdle. For example: a) the establishment of links between Islam and cultural nationalism; b) the organisation and establishment of processes for Muslim state consolidation where the Muslim community is remotely influenced by Shari’ah laws; c) the co-ordination of a new notion of coming to grips with the international pressures of modern scientific reproductive innovations and the devising of a way in which to incorporate these into social priorities and policies; d) the refraining from dealing with Muslim women and men against critical realities in the constantly changing world.⁸⁰⁴ Kandiyoti seems to be encouraged when she stated that: “Debates about subordination of women now occurred in a more complex theoretical field, in which analytic primacy of Islam was temporarily eclipsed.”⁸⁰⁵ Changes brought by the acquisition of modern science, especially those in human reproduction, have undoubtedly brought such issues to the forefront.

The creation of Islamic states further abandoned women’s mosque-based traditions, and “gradually drained of its content”⁸⁰⁶ it transformed into an oppressive institution for women. Discouraging women from attending mosques was in clear violation of the Prophet Mohammad’s practice.⁸⁰⁷ Thus, restricting women’s access to mosques⁸⁰⁸ is tantamount to depriving them of their democratic rights and veiling them is an implementation of their resistance to authoritarianism.⁸⁰⁹

⁸⁰³ Op. cit. Anouar, 1988, p.323.

⁸⁰⁴ Kandiyoti, D., 1991a. *Women, Islam and the State*. Basingstoke: Macmillan. p.10.

⁸⁰⁵ Ibid. p.9.

⁸⁰⁶ Mernissi, F., 1987. *Beyond the Veil: Male-Female Dynamics in a Modern Muslim Society*. Rev. edn. Bloomington and Indianapolis: Indiana University Press, pp.130-132.

⁸⁰⁷ Ibid. p.136.

⁸⁰⁸ The practice of veiling began in Mesopotamian cultures as early as 4000-5000 years ago and as an adaptation to desert life; that is, for protection against the sun, wind and sand. A variety of religions and cultures with roots in the Middle East and Mediterranean regions incorporated the practice of veiling. Veiling was seen as a ritual to purify, and Greeks, Jews, Hindus and Christians all practised veiling. Although the practice of veiling pre-dates Islam, it has been embraced and spread by the religion. Many Muslims view the practice of veiling as a symbol of virtue, modesty, and privacy for women.

⁸⁰⁹ Op.cit. Mernissi, 1987, pp.140-141.

One of the contentions which traditionalist Muslims argue in favour of veiling is that men's sexuality can be ignited through unregulated social contact with women. Therefore, the veil is a symbol of Muslim women's obedience to Islamic principles and reflects cultural and ethnic identity.⁸¹⁰ In other words, "Restoring women to the political arena thus becomes the necessary condition for restoring the long-eclipsed democratic spirit to Islam".⁸¹¹

There are no laws requiring women to observe veiling in most Middle Eastern countries. What a Muslim woman should wear⁸¹² 'has been openly debated and fought over in different factions, always in highly charged and emotional language',⁸¹³ as a means to modesty or seclusion.⁸¹⁴ Muslim women who genuinely believed that their position would automatically improve have become increasingly disillusioned by discriminatory and patriarchal discourses and the policies exercised through the application of Shari'ah law under the protective umbrella of Islam. It was early Islamic scholars "who have arrogated to themselves the task of defining the ontological, theological, sociological and eschatological status of Muslim women".⁸¹⁵ On the issue of 'global feminism', Maryam Behrouzi enlarges the point by stating that:

"We don't believe that every social change is harmful. Cultural refinement of some traditions, such as patriarchy (*mardsalari*), anti-woman attitudes (*zan-setizi*), and humiliation of women (*tahghir-e zanan*) must disappear. These have been fed to our people in the name of Islam."⁸¹⁶

⁸¹⁰ *Encyclopaedia of Women's Health*, p.675.

⁸¹¹ Op. cit. Anouar, 1988, p.330.

⁸¹² There is no precedent or rule of Islamic women's dress. Arabian women, who usually worked outdoors, had no facial veil, and their covering of the head varied by time and area. The outdoor dress for upper-class women included a facial veil and loosely covered the rest of the body.

⁸¹³ Mir-Hosseini, Z., 1996. *Stretching the Limits: A Feminist Reading of the Sharia in Post-Khomeini Iran*. In: M. Yamani, ed., *Feminism and Islam: Legal and Literary Perspectives*. New York: New York University Press.

⁸¹⁴ Keddie, N. R., 1990. The Past and Present of Women in the Muslim World. *Journal of World History*, 1 (1): 77-108.

⁸¹⁵ Hassan, R., 1988. Equal Before Allah? Woman-man equality in the Islamic tradition. *WLUML Dossier*, 5-6.

⁸¹⁶ Quoted in Zan-e-Rouz, 1994, p.4.

She fell short of commenting on the urgent need to review the existing interpretation of Shari'ah law with regard to modern scientific human reproductive developments.

Leila Ahmed traces the history of when veiling and seclusion were introduced by Prophet Mohammad, not for common women but for his wives, and the Arabic expression that “[she] took on the veil” meant ‘the person’ became the wife of the Prophet Mohammad.⁸¹⁷ Therefore, veiling and seclusion were observed only by the Prophet Mohammad’s wives throughout his life.⁸¹⁸ In pre-Islamic Arab history women actively participated in the social and economic affairs of communities.⁸¹⁹ Thus, the status of Muslim women since early Islam has been a neglected topic insofar as their participation in the political and economic world is concerned.

Amina Wadud has no doubts in stating that: “It is clear to me that the Qur’an aimed to erase all notions of women as subhuman. There are more passages that address issues relating to women – as individuals, in the family, as members of the community – than all other social issues combined.”⁸²⁰ Women’s status of equality cannot be more comprehensively expressed than by the following Qur’anic verses, such as:

“O mankind! Reverence your Guardian-Lord, Who created you from a single person, created of like nature, his mate and from them both scattered [like seeds] countless men and women.”⁸²¹

“He [God] it is Who did create you from a single soul and there from did create his mate, that he might dwell with her [in love].”⁸²²

“The Creator of heaven and earth: He had made for you pairs from among yourselves.”⁸²³

⁸¹⁷ Op. cit. Ahmed, 1986, p.682.

⁸¹⁸ Ibid.

⁸¹⁹ Op. cit. Walther, 1993, pp.69 and 70.

⁸²⁰ Op. cit. Wadud, 2006, p.202.

⁸²¹ Qur’an, 4:1.

⁸²² Qur’an, 7:189.

⁸²³ Qur’an, 42:11.

In addition, the Qur'an reveals clear evidence that a woman is completely equated with a man in the sight of God in terms of her rights and responsibilities when it reveals that:

“Every soul will be [held] in pledge for its deeds.”⁸²⁴

“... So their Lord accepted their prayers, [saying]: I will not suffer to be lost the work of any of you whether male or female. You proceed one from another. ...”⁸²⁵

“Whoever works righteousness, man or woman, and has faith, verily to him will We give a new life that is good and pure, and We will bestow on such their reward according to their actions.”⁸²⁶

“And they [women] have rights similar to those [of men] over them, and men are a degree above them.”⁸²⁷

There is no doubt that the revelation of the above Qur'anic verses expresses a degree of *Quiwama* (maintenance and protection), which refers to the difference between the sexes; the weaker sex to be protected by the stronger sex. But this ‘protection’ does not imply any distinct degree of superiority or advantage in the eyes of Shari’ah law. In addition, man’s role of leadership in relation to his family does not mean the husband should act as a dictator to his wife. Islam emphasises and promotes the importance of taking counsel and reaching mutual agreements in family decisions. The Qur'an gives us an example: “... If you [husband/wife] desire to wean the child by mutual consent and [after] consultation, there is no blame on them. ...”⁸²⁸

The rights of a wife as enumerated above are the basic rights of a wife which are emphasised by the Qur'an and are strongly recommended by the Prophet Mohammad, i.e. kind treatment and equal companionship. The Qur'an states:

⁸²⁴ Qur'an 74:38.

⁸²⁵ Qur'an 3:195.

⁸²⁶ Qur'an 16:97; see also 4:124.

⁸²⁷ Qur'an 2:228.

⁸²⁸ Qur'an 2:233.

“... But consort with them in kindness, for if you hate them it may happen that you hate a thing wherein God has replaced much good.”⁸²⁹

Equally, there is no decree in Islam which forbids a woman from seeking employment whenever there is a necessity for it, especially in positions which fit her nature and in which society needs her most. Examples of these are nursing, teaching (especially for children), and medicine. Moreover, there is no restriction to benefitting from a woman’s exceptional talent in any field. Early examples can be seen to be Abu-Hanifa⁸³⁰ and Al-Tabary,⁸³¹ maintaining that there is nothing wrong with it.⁸³² Islam also acknowledges a woman’s right of inheritance, whereas she was an object of inheritance prior to Islam in some cultures. Her share is completely hers and no one can make any claim on it, including her father and her husband: “Unto men [of the family] belongs a share of that which Parents and near kindred leave, and unto women a share of that which parents and near kindred leave, whether it be a little or much – a determinate share.”⁸³³

A Muslim woman’s possessions before marriage do not transfer to her husband and she even keeps her maiden name. She had no obligation to spend money on her family out of such properties or out of her income after marriage. She is entitled to the ‘*mahr*’ (dowry), which she takes from her husband at the time of marriage and if she is divorced, she may get alimony from her ex-husband. Islam also symbolises a woman’s right of election as well as the nomination to political office, and to participate in public affairs. Both in the Qur’an and in Islamic history, there are examples of women who have participated in serious discussions and argued even with the Prophet Mohammad.⁸³⁴ During the Caliphate of Umar Ibn al-Khattab, a woman argued with him in the mosque, proved her point and caused Umar Ibn al-

⁸²⁹ Qur’an 4:19.

⁸³⁰ Abu Hanifa was from the era of the Companions of Prophet Mohammad. He was born in Kufa, an important centre of Hadith at that time. His entire upbringing and education was completed in Kufa, the well-known centre of theological education.

⁸³¹ Abu Ja’far Muhammad ibn Jarir al-Tabari (838-923) was one of the earliest, most prominent and famous Persian historians and exegete of the Qur’an. He is most famous for his work *Tarikh al-Umam wa al-Mulook*, or abbreviated as: “*Tarikh al-Tabari*” and *Tafsir al-Tabari*.

⁸³² Badawi, J. A., 1971. The Status of Women in Islam. *Al-Ittihad Journal of Islamic Studies*, 8 (2).

⁸³³ Qur’an 4:7.

⁸³⁴ Qur’an. 58:1 and 60:10-12.

Kattab to declare in the presence of people: “A woman is right and Umar is wrong.”⁸³⁵

The above Qur’anic verses and the detailed discussion signifies that if there is no argument between a husband and wife pertaining to recourse to modern scientific technologies to alleviate infertility, or to interpreting the social impact of ovum, sperm or embryo donation, then these issues can be resolved on the basis of equal rights. It is the status of Muslim women that has become the by-product of the unilateral interpretation of selective textual sources in denying their legitimate rights.⁸³⁶ It is only within the last few decades that Muslim women have been strategising against two kinds of wrongdoings; one emanating from patriarchal domination⁸³⁷ and the other resulting from undue suppression by the interpretation of Shari’ah law, the roots of which can be traced from the traditional cultural systems at the time of the Qur’anic revelation.⁸³⁸

Mahamoud Taha summarises this quite clearly:

“If women like Mernissi^[839] transgress by arguing that what Muslim men are calling ‘divine decree’ merely amounts to pretexts for upholding male privilege, Islamists like Anouer Majid^[840] stand ready to whip them into shape and to teach them that Islam is a culture ‘in which accommodation to divine intent is a fundamental principle’.”⁸⁴¹

⁸³⁵ Op. cit. Badawi, 1971.

⁸³⁶ Op. cit. Eissa, 1999.

⁸³⁷ According to Eissa, 1999, “The *umma* of seventh-century Arabia were patriarchal, and traditional jurists maintained that this reflected the natural order. The gender hierarchy that continued to prevail classed men as the leaders and protectors of women, who were classed as infantile and sexually vagrant. Women were therefore a source of *fitna*, threatening the stability of *umma*. They were treated as suspect and untrustworthy, and had to be kept in check for fear that they would plunge the *umma* into *fitna*.”

⁸³⁸ Op. cit. Mir-Hosseini, 1996, pp.285-319.

⁸³⁹ Mernissi was born into a middle-class family in Fez in 1940. She received her primary education in a school established by the nationalist movement, and secondary level education in an all-girls school funded by the French protectorate. In 1957 she studied political science at the Sorbonne and at Brandeis University, where she earned her doctorate.

⁸⁴⁰ Op.cit. Anouar, 1998, p.340.

⁸⁴¹ Mayer, A. E., 1998. The Politics of Feminism in Islam. *Signs*, 23 (2): 371-372.

In addition, Anouer Majid strongly believes that secularism “cannot be the basis of any emancipatory social movement in the Arab and Islamic worlds”,⁸⁴² a claim, in his opinion, which would be vigorously contested by many women in Turkey and Central Asia, who argue that their relatively advanced emancipation is mainly due to the adoption of secular policies.⁸⁴³

Before the inception of Islam, women in nomadic societies performed a stronger role in Arabian family life. Women like Khadijah⁸⁴⁴ and A’ishah⁸⁴⁵ (wives of the Prophet Mohammad) were powerful figures in the stature of social Islam. Rabi’a al-Basri⁸⁴⁶ also figured significantly in early Islam. According to Nikki Keddie, “The gradual decline in public roles of women probably occurred not because of the influence of Islam as such, but because of its interaction with Middle Eastern society and customs.”⁸⁴⁷ It is Dahlia Eissa’s contention that: “One may ask, however, if men are intellectually superior to women, why it was that the believers after the death of the Prophet Mohammad would go to ‘Aisha for advice on their religious duties’.”⁸⁴⁸ During the lifetime of Prophet Mohammad and also after his death, Aisha exercised

⁸⁴² Op.cit. Anouar, 1998, p.340.

⁸⁴³ In 1985, Mahmoud Muhammad Taha, a progressive Islamic thinker, was hanged in the Sudan for apostasy from Islam. He was pro the total elimination of Shari’ah and was found guilty for offering fresh ideas about Qur’anic interpretation and human rights. While professing sympathy for the extremely useful work of Taha’s disciples, Abdullahi An-Na’im stated that Taha was ‘opportunistically’ executed for challenging orthodox beliefs.

⁸⁴⁴ Khadijah bint Khuwaylid, or Khadijah al-Kubra (555 CE-619 CE) was the first wife of the prophet Muhammad. Khadijah was the daughter of Khuwaylid ibn Asad and Fatimah bint Za’idah and belonged to the clan of Banu Hashim. Khadijah’s father, Khuwaylid ibn Asad, who died around 585, was a merchant, and a successful businessman whose vast wealth and business talents were inherited by Khadijah, who successfully managed her father’s business interests and preserved the family’s fortune.

⁸⁴⁵ Aisha bint Abu Bakr (died 678) was the third wife of Prophet Mohammad. She is often referred to by the title “Mother of the Believers” (*umm-al-mu’minin*), as per the description of Mohammad’s wives as “Mothers of Believers” in the Qur’an (33.6), and later as the “Mother of Believers”, as in Qutb’s *Ma’alim fi al-Tariq* (pps6). She is quoted as a source for many hadiths, sacred traditions about Prophet Mohammad of his personal life being the topic of most narrations. She narrated 2210 hadiths, out of which 316 hadiths are mentioned in both Sahih al-Bukhari and Sahih Muslim.

⁸⁴⁶ Not much is known about Rabia al Basri, except that she lived in Basra in Iraq, in the second half of the 8th century AD and was born into poverty between 95 and 99 Hijri. Many spiritual stories are associated with her and what we can glean about her is reality merged with legend. She was regarded as the first female saint of Sufism, the mystical tradition of Islam. She did not leave any written works.

⁸⁴⁷ Op. cit. Keddie, 1990.

⁸⁴⁸ Op. cit. Eissa, 1999, p.17.

a huge degree of authority and independence.⁸⁴⁹ Similarly, how would one reconcile the fact that Prophet Mohammad was an employee of his first wife, Khadija, a wealthy merchant woman, who was not only financially responsible for her own domestic affairs, but also paid wages to Prophet Mohammad. The reality is that Islamic religious scholars cannot find any recorded instance of the Prophet Mohammad restricting his wives' access or participation in any instance, for any reason. His wives enjoyed unfettered mobility and participation in public life, subject to the requirement that they aspired to moral conduct fit for the 'mothers of the *umma*'. Therefore, good women are those who are obedient to God. "There is no requirement that women obey their husbands."⁸⁵⁰

Muslim women's untiring struggle to cast away unilateral patriarchal oppression, in which the male has usurped the fullest legal capacity against women, has stimulated new interest. Their efforts have made some headway in claiming the urgency of Shari'ah law to be re-read so that it becomes abreast with modern-day scientific innovations. Although the Muslim feminist march for Islamic feminism has made itself increasingly felt, it is still in an embryonic stage. In spite of considerable incremental gains, they are still a long way from claiming any victory for their rights. Asghar Ali Engineer states that:

"The latest example can be given from Egypt. When the Hasni Mubarak Government in Egypt introduced a legislation for giving women right to divorce (which is sanctioned by the Qur'an) the Islamic clergy opposed it on the grounds that women are hasty in decision making and any such right given to them would destabilise the family life."⁸⁵¹

One of the reasons attributed to the late insurgence of Muslim women is that they have been living a life of passivity for a long time. During this period of longevity, what they knew was defined by others, and the construction of their knowledge was not their creation. There was inadequate creative thinking and the resolving of personal issues, such as decisions on family matters, were made by others. Unlike

⁸⁴⁹ El Saddawi, N., 1980. *The Hidden Face of Eve*. London: Zed Books, pp.125-131.

⁸⁵⁰ Op. cit. Eissa, 1999, p.43.

⁸⁵¹ Op. cit. Engineer, 2002a, p.3.

religious tenets, social movements that contribute to social changes have seldom been an item on the social political agenda of Muslim women. No constructive arguments or discussions have yet been manifested pertaining to their suffrage due to the theological interpretation on lineage or their acute suffering due to infertility. So far, no decisive argument has been put forward that the adoption of children debars other family members from rights of claiming inheritance.

In a short period of time Islam became patriarchal, anti-historical and anti-feminist.⁸⁵² It transposed lineage into a spiritual ordination, and the Shari'ah law of inheritance put shackles on the principle of adoption. Recently, the Iranian Cabinet Council Act⁸⁵³ and Lebanon have permitted sperm and egg donation to combat infertility. In addition, there has been thriving activity in the field of education which is proving to be the main strength of Muslim women in combating against the misdemeanours of the past. The rigid and irreplaceable negated established ideas of the past have resulted in an unprecedented struggle by Muslim women in attaining recognition in a mental, physical and emotional environment.⁸⁵⁴

The uphill struggle in the pattern of education is beginning to succeed in certain Muslim states, such as Pakistan, Egypt, Turkey, and Tunisia.⁸⁵⁵ It has vigorously drawn the attention of Islamic religious scholars as well as rulers of Islamic states towards the harshness of *Hudud Laws* (capital crime), the *Qanun-e-Shahadat* (law of evidence), *Qisas* and *Diyat* (blood line), which are mainly in place to keep Muslim women subordinate and inferior to Muslim men.

In the later part of the 1990s, the protest against Islamic states, mainly from intellectual women students, has begun to demonstrate for civil liberties, political freedom, women's fundamental rights and a relaxation of rigid cultural and social controls. The "Islamic feminists group" firmly believe that the activities and goals of

⁸⁵² Op. cit. Mernissi, 1992, pp.170-171.

⁸⁵³ Embryo Donation in Infertile Spouses Act.

⁸⁵⁴ Tohidi, N., 1994. Modernization, Islamization, and Gender in Iran. In: V. E. Moghadam, ed., *Gender and National Identity: Women and Politics in Muslim Societies*. London & Karachi: Zed Books & Oxford University Press.

⁸⁵⁵ Although the three largest Muslim majority countries by population are, in order, Indonesia, Bangladesh and Pakistan, tens of millions of Muslims also live in India, the Soviet Union and China.

Muslim women are greatly circumscribed and compromised, and there are no improvements in sight regarding the status of women as long as the Islamic Republics do not recognise it.⁸⁵⁶ In Iran, for example, ‘Many of the women parliamentarians and women working as civil servants came to make demands on the government for equality and greater opportunity’,⁸⁵⁷ which may remain ineffective unless some logical and reasonable revision of Shari’ah law is made. Najmabadi defined ‘Islamic feminism as a reform movement carrying a dialogue between religious and secular feminisms, and the real women’s problem lies in four salient areas, i.e. religion, culture, law and education.’⁸⁵⁸ If the way is paved in these four principal domains, then there is hope for women’s development in society’s advancement.⁸⁵⁹

Turkish Muslims living in Western societies tend to be younger when confronted with fertility problems for the first time in their lives.⁸⁶⁰ Although they do not readily disclose their infertility problems to others,⁸⁶¹ they nevertheless have both social and individual parenthood motives for having their own children,⁸⁶² a relatively stronger desire when living in a secular atmosphere. This is perhaps one reason for infertile Turkish couples to start infertility treatment ahead of indigenous infertile couples.⁸⁶³ For many Turkish Muslim couples, infertility leads to the concealing of one of the

⁸⁵⁶ Moghadam, V. M., 2002. Islamic Feminism and Its Discontents: Toward a Resolution of the Debate. *Signs*, 27 (4): 1135-1171.

⁸⁵⁷ Ibid.

⁸⁵⁸ *Zanan*, An independent Iranian women’s magazine. 1992, 2.

⁸⁵⁹ Ibid.

⁸⁶⁰ Kentenich, H. and Yüksel, E., 1997. *Psychosomatisches Betreuungskonzept steriler türkischer Paare in der Migration [Psychosomatic care outline of sterile Turkish couples in migration]*. Berlin; van Rooij, F. B., van Balen, F. and Hermanns, J. M. A., 2007. Emotional distress and infertility: Turkish migrant couples compared to Dutch couples and couples in Western Turkey. *Journal of Psychosomatic Obstetrics and Gynaecology*, 28 (2): 87-95.

⁸⁶¹ Op. cit. Van Rooij *et al.*, 2007.

⁸⁶² Gacinski, L., Yüksel, E. and Kentenich, H., 2002. The unfulfilled desire for a child of oriental couples – Infertility counselling and treatment for Turkish immigrants in Germany. In: B. Strauss, ed., *Involuntary childlessness, psychological assessment, counselling and psychotherapy*. Seattle, Toronto, Bern, and Gottingen: Hogrefe & Huber.

⁸⁶³ Van Rooij, F. B., van Balen, F. and Hermanns, J. M. A., 2006. Migrants and the meaning of parenthood: Involuntary childless Turkish migrants in The Netherlands. *Human Reproduction*, 21 (7): 1832-1838.

important parts of their lives.⁸⁶⁴ In the study conducted by van Rooij,⁸⁶⁵ “none of the respondents explicitly referred to the religious duty of Muslims (Islam is the main religion among Turkish immigrants) to procreate, which has been put forward as an important contributor in other studies.”⁸⁶⁶

Nayereh Tohidi⁸⁶⁷ offered a sagacious proposition that “secular feminism should differentiate between those Islamic women who are genuinely promoting women’s rights and hence inclusionary in their politics from those who insist on fanatic or totalitarian Islam.”⁸⁶⁸ Nayereh Tohidi further refers to Mehrangiz Kar, who advocates that “reformist or women-centred interpretation of religious laws should be considered not as an alternative to secular and democratic demands but as a component of a more holistic social change”.⁸⁶⁹ Kar ‘elaborates on the necessary interaction of religious reinterpretation and secular thought and activism toward modernity and democracy’.⁸⁷⁰

Whilst Moghissi is of the opinion that “Islam in political rule [role] is incompatible with the cultural pluralism that is after all the prerequisite of the right to individual choice”,⁸⁷¹ Riffat is quite resolute in stating that:

⁸⁶⁴ In the majority of the cases, couples decide to disclose their fertility problem as a female problem to protect the men from slander about their sexual functioning, and sometimes also to protect the women from being accused of adultery when becoming pregnant.

⁸⁶⁵ Van Rooij, F. B., van Balen, F. and Hermanns, J. M. A., 2009. The Experiences of Involuntarily Childless Turkish Immigrants in the Netherlands. *Qualitative Health Research*, 19 (5): 621-632.

⁸⁶⁶ Gunay, O., Cetinkaya, F., Nacar, M. and Aydin, T., 2005. Modern and traditional practices of Turkish infertile couples. *European Journal of Contraception and Reproductive Health Care*, 10 (2): 105-110.

⁸⁶⁷ Totalitarian, from an Islamic point of view, can be the establishment of a traditional cultural system in which the Islamic estate exercises absolute and centralised control; hence, a system where the people have virtually no authority and the state wields absolute control of every aspect of the country, socially, financially and politically.

⁸⁶⁸ Tohidi, N., 1991. Gender and Islamic Fundamentalism: Feminist Politics in Iran. In: C. T. Mohanty, A. Russo and L. Torres, eds. *Third World Women and the Politics of Feminism*. Bloomington: Indiana University Press, p.287.

⁸⁶⁹ Ibid. p.288.

⁸⁷⁰ Op. cit. Moghadam, 2002. Quoted Kar, M., 1999. *The Legal Status of Iranian Women*. Paper presented at the Dialogue and Action between the People of Iran and America (DAPIA) meeting, Cyprus.

⁸⁷¹ Moghissi, H., 1993. Women in the Resistance Movement in Iran. In: H. Afshar, ed., *Women in the Middle East: Perceptions, Realities, and Struggles for Liberation*. New York: St. Martin’s, p.42.

“No matter how many socio-political rights are granted to women, as long as they are conditioned to accept the myths used by theologians or religious hierarchies to shackle their bodies, hearts, minds, and souls, they will never become fully developed or whole human beings.”⁸⁷²

It would seem that the arguments, discussion and propositions that have so far been proposed by various Islamic writers and scholars are subjective rather than objective and are in need of some positive and conclusive deliberations in order to take the cause further.

The main argument in this thesis is that Islamic feminism has a degree of Western feminism influence, yet the major vacuum in its persuasion is the neglect of key issues such as infertility, human reproduction, sexuality, veiling⁸⁷³ and religious law.⁸⁷⁴ For example, women who live away from Western influences do not enjoy equal participation in resolving these issues. They, under unwarranted patriarchal pressure, usually forego their rights and concede to the edicts of Shari’ah law. It would thus seem rather a naïve hope that Islamic feminism will achieve the desired results without Islamic religious scholars who are sufficiently persuaded to redress the issues by revising Shari’ah law.

Consequently, the re-reading of Shari’ah has been urged by Muslim reformists for well over a century, in order to compare and ascertain why the classic heritage of Shari’ah, deduced through the interpretation of Qur’an and Hadith, is still inconsistent with the principles of equality and fundamental human rights of the present day. The provisions of Shari’ah law legislated during the 8th and 11th centuries are still irreconcilable with the new changes and developments of modern

⁸⁷² Op. cit. Hassan, 1988.

⁸⁷³ Nada, T., 1968. The Situation of Egyptian Women in the First Half of the Nineteenth Century. In: W. R. Polk and R. L. Chambers, eds., *Beginning of Modernisation in the Middle East*. Chicago: University of Chicago Press. Although veiling and seclusion do not impede Muslim women living their varied and perhaps significant lives, there are signs of Shari’ah law and parts of traditional cultural systems in which males’ dominance is directed such that females must be controlled if sexual and social anarchy are not to be jeopardised.

⁸⁷⁴ Shahidian, H., 1998. Feminism in Iran: In Search of What? (in Persian). *Zanan*, 40: 32-38.

human rights principles.⁸⁷⁵ The demand of revision is mainly because many of these human rights changes and developments were not present when Shari'ah law came into being; therefore its universality in terms of equality is also being questioned.

Undoubtedly it may be a useful exercise to examine, appraise and analyse Shari'ah law's elementary values and "[the] inalienable rights of individuals recognised and protected by Islamic law. These are certainly not identical with or as numerous as the human rights that are now internationally recognised."⁸⁷⁶ If Shari'ah law is to conform to modern fundamental human rights,⁸⁷⁷ it should find ways to liberate Muslim women and infertile couples from the unnecessary religious conscientious control. It also has to review the laws and policies which are allegedly based on orthodox, literalist and/or misogynist interpretations.

Evidently, 'the epistemology of Islam is contrary to women's rights'.⁸⁷⁸ To call oneself a Muslim and a feminist may not be the same as an Islamic feminist and there seems to be a contradiction in terms. According to Rupp, feminism in a variety of structures and importance is a contested term. Even present and historical literature is full of many feminist similes; for example, 'Catholic feminists and Islamic feminists, socialist feminists and utopian feminists, social feminists and equity feminists, imperial feminists and national feminists.'⁸⁷⁹ According to Leila, it has always been difficult to find a common ground. However, Keddie is of the opinion that:

"Modernist arguments are variable, but they display some common features. One such feature is to say that the Qur'an has more than one meaning (an old view), and that its literal prescriptions were designed for its own times, with later reforms suggested by Qur'anic phrases as interpreted by the modernists.

⁸⁷⁵ Peters, R., 1999. Islamic Law and Human Rights: A contribution to an ongoing debate. *Islam and Christian Muslim Relations*, 10 (1): 5-14.

⁸⁷⁶ Ibid. p.8.

⁸⁷⁷ Rispler-Chaim, V., 1991. Human Rights in Islam: the literary genre. *Proceedings of the 1991 International Conference on Middle East Studies*, London.

⁸⁷⁸ Interview with Mahnaz Afkhami, Washington DC, 21st November, 1999.

⁸⁷⁹ Rupp, L. J. and Taylor, V., 1995. Forging Feminist Identity in the International Movement: A Collective Identity Approach to Twentieth-Century Feminism. *Signs*, 4 (21): 363-386.

An allied argument is to stress the ‘spirit of the Qur’an’ and to say that the Qur’an is egalitarian (largely true) and favours human rights, and that these general principles were meant to be extended to women’s rights.”⁸⁸⁰

It has further become an ongoing theme amongst many modern writers that religious doctrine should not be the basis of laws, policies, or institutional family law and should not be derived from religious text.⁸⁸¹ Instead, religious belief should be respected, and religious institutions should have a place in civil society, but religion should not dominate the state and the law.⁸⁸² Keddie confirms that: “For many believers, Western gender practices are seen more as aggression than as liberation, and Islamist women can find some genuine advantages for themselves in their new interpretation of Islam.”⁸⁸³

The above analysis has shed light on how important it has become for Muslim women to have an equal say in social and political matters, and for infertile couples to have fundamental rights pertaining to alleviating infertility under modern reproductive technological procedures. It may perhaps be detrimental to the cause if absolute boundaries were to be created between Islamic feminism and Western feminism.⁸⁸⁴ If at all, it is Muslim women who should be regarded at the centre of the ethical, social and moral context of Islam against the unilateral interpretation of the spiritual tenets of Islam.⁸⁸⁵

Along with the retrieval of Islamic emancipatory traditions, “Muslim women would not be compelled to make the intolerable choice between religious belief and their own autonomy and self-affirmation.”⁸⁸⁶ Instead, a reinterpretation should provide a

⁸⁸⁰ Op. cit. Keddie, 1990, p.97.

⁸⁸¹ Op. cit. Moghadam, 2002, p.1143.

⁸⁸² Ibid. p.1164.

⁸⁸³ Op. cit. Keddie, 1990.

⁸⁸⁴ Op. cit. Moghadam, 2002, p.1165.

⁸⁸⁵ Op. cit. Keddie, 1990, p.78.

⁸⁸⁶ Op. cit. Ahmed, 1986, p.679.

way to gradually fade away its “uncompromising universal in outlook”⁸⁸⁷ without abandoning or curtailing the parameters of Islam.

There is a feeling of acute disillusionment in Ann Elizabeth Mayer’s assertion when she⁸⁸⁸ concludes that, despite the fact that Islam initially provided unprecedented rights to a Muslim woman, all the evidence fails to elevate her to an equal status with a Muslim man. It also fails to meet the basic standards of the Universal Declaration of Human Rights (UDHR) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). It would seem that perhaps under the erroneous pretension of religious necessities a serious misuse of religion is made. According to Maryam, ‘although religious reform is salutary and necessary, it is important to acknowledge its limitations’,⁸⁸⁹ because “women have been the prime victims of such sanctification of culture”.⁸⁹⁰

Finally, Riffat Hassan has asserted in no uncertain terms that:

“In my judgement the importance of engaging in a serious theological discussion of women-related issues in Islam today is paramount to liberate not only Muslim women but also Muslim men from unjust structures and laws that make a peer relationship between men and women impossible.”⁸⁹¹

There is, therefore, “a serious need for constructive and bold humanism that would restate Islamic social ideals in order to back up this new legislation”.⁸⁹² The universality of the Qur’an cannot be restricted to the interpretation assigned to conditions prevalent in 7th century Arabia. Islamic religious scholars need reminding of the Qur’anic verse: “But say not - for any false thing that your tongue may put out

⁸⁸⁷ Op. cit. Anouar, Majid, 1998, p.324.

⁸⁸⁸ Mayer, A. E., 1995. *Islam and Human Reproduction Act Rights: Tradition and Politics*. 2nd edn. Boulder, CO: Westview.

⁸⁸⁹ Zan-e-Rouz, 1994. 30 Mehr 1373 (November).

⁸⁹⁰ Saud, J., 1998. Critique of Politics and the Politics of Critique. *Signs*, 23 (2): 363-369.

⁸⁹¹ Op. cit. Hassan, 1988.

⁸⁹² Rahman, F., 1984. *Islam and Modernity*. Chicago, IL: Chicago University Press, p.5.

– ‘This is lawful, and this is forbidden’, so as to ascribe false things to Allah, will never prosper.’⁸⁹³

⁸⁹³ Qur’an 16:116.

Chapter Eight

The Importance of Reinterpretation of the Allegorical Verses of the Qur'an

One of the major issues of paramount importance analysed in this thesis is the reinterpretation of the existing allegorical verses of the Qur'an for the obvious reasons explained in this chapter; it is to bring these into line with modern human reproductive technology. The re-reading of Shari'ah has been urged by Muslim reformists for well over a century, to compare and ascertain whether the provision of the classic heritage of Shari'ah, deduced through the interpretation of Qur'anic verses during the 8th and 11th centuries are still consistent with modern fundamental human rights principles.⁸⁹⁴ The demands for revisions are mainly because many of these human rights changes and scientific developments in human reproductive technologies were not present when Shari'ah law came into being, and these are the "inalienable rights of individuals recognised and protected by Islamic law. These are certainly not identical with or as numerous as the human rights that are now internationally recognised."⁸⁹⁵ If Shari'ah law conforms with modern fundamental human rights,⁸⁹⁶ Muslim women and infertile couples would be free from the orthodox, literalist and/or misogynist interpretations.

Feisel Abdul Rauf is of the opinion that, as the significance of existing interpretations has changed over the course of time, it deserves the attention of the majority of jurists to adjust the provisions accordingly. It was the same logical pattern applied by the early Islamic jurists when they felt it necessary to change the social pattern of lineage, adultery and *zina*, prevalent during the jihalliya period and which brought it in line with Islamic cultural systems.

⁸⁹⁴ Op. cit. Peters, 1999, p.6.

⁸⁹⁵ Ibid. p.8.

⁸⁹⁶ Op. cit. Rispler-Chaim, 1991, pp. 478-490.

Therefore, it is necessary to enquire on a broader scale about the lingering difficulties which infertile Muslim couples are facing in availing modern medical human reproduction facilities to alleviate infertility. A lack of familiarity and an understanding of modern human reproductive technology may be one of the causes why Islamic scholars are reluctant to manifest a positive approach towards reviewing and making use of the benefits made available by the modern reproductive technologies. Instead, they are content to wear and hide under a defensive cloak.⁸⁹⁷

Until the time of Prophet Mohammad, Arabs had no ethical or moral sustaining principles of lineage; nor were they accustomed to the indecencies of *zina* and adultery.⁸⁹⁸ They had different emphasis with regard to lineage, adultery or *zina*, and did not observe the moral principle that “a man should keep his wife strictly to himself”.⁸⁹⁹ The inception of Islamic cultural traditions gave rise to control and prohibited the irresponsible custom of lineage and uncontrolled practice of *zina* and adultery. The existing Shari’ah provisions may have been apt and suitable until modern scientific technologies have revealed the successful procedures whereby infertile couples can alleviate their inability by having recourse to egg donation. Sperm and egg donation was not a topic contemplated at that time when Shar’iah provisions were being made.

The pre-Islamic conditions of Arabia bear close similarity to the present-day needs of addressing societal structures in harmony with the concept of genetic theories which were not in existence at the inception of Islam. Neither the changes brought to pre-Islamic Arabian cultural systems, nor should the existing allegorical interpretations of Qur’anic verses prevent the benefits brought about by the gradual acquisition of scientific knowledge, which has paved the way to modern human reproductive technologies for infertile couples.

⁸⁹⁷ According to Eickelman, D. F., 1998. Inside the Islamic Reformation. *Wilson Quarterly*, 22 (1): 80-89, in May 1997 a debate between al-Azm and Shaykh Yusuf al-Qaradawi, a conservative religious scholar, was broadcast on Al-Jazira Satellite TV (Qatar). It was the first time in the memory of many viewers that the religious conservatives came across as the weaker. Tapes of the broadcast were circulating from hand to hand in Morocco, Oman, Syria, Egypt, and elsewhere.

⁸⁹⁸ Bakri, cited in Robertson, 1907.

⁸⁹⁹ Op. cit. Robertson, 1907, p.147.

Ancient Arabian history on the then prevalent cultural systems is evidently incohesive and at places inconclusive.⁹⁰⁰ A closer examination reveals that the narrators were not speaking from knowledge but merely drawing inferences from the poetry of famous poets, such as Jarir,⁹⁰¹ of that time. Hence, the scattered references do not provide a complete history of the cultural traditions and the protection afforded to the families at Mecca when the old cultural systems and the social orders began “falling into decay along with the old religion”.⁹⁰²

During its inception, Islam created orderly relationships within Muslim families and harmonised the unity between man and woman, giving rise to a socially and traditionally acceptable lineage and identity. It is a mistake to assume that such rules should remain steadfast and must not be reviewed in all circumstances and at all times. The well known and frequently quoted statement of the Prophet that, “Actions are judged by their intention”,⁹⁰³ justifies such an assumption.

Rauf enquires whether *imams* (religious preachers in the mosques) have enough understanding to appreciate the importance of the needed changes.⁹⁰⁴ For example, do they have adequate knowledge of modern scientific innovations in human reproductive technologies to comment upon them? Amina Wadud signifies implied agreement with Rauf when he insists that: ‘contemporary opinions and technologies are forcing us to think of the morality of the issues that were not posed to us before’.^{905, 906} Thus, the lack of understanding and appreciation of key elements of human reproductive technologies is bringing about uncompromising results. Even a

⁹⁰⁰ Ibid. pp.10-11.

⁹⁰¹ Jarir ibn `Atiyah al-Khatfi Al-Tamimi was an Arab poet and satirist. He was born in the reign of the Caliph Othman, and was a member of the tribe Kulaib, part of the Banu Tamim.

⁹⁰² Op. cit. Robertson, 1907, p.51.

⁹⁰³ “*innama al-a malu bi al-niyyah*” al-Nawawi, Forty Hadiths.

⁹⁰⁴ Feisel, A. R., 2000. *Islam: A Sacred Law: What Every Muslim Should Know About Shari'ah*. Brattleboro, VT: Qiblah Books, p.15.

⁹⁰⁵ Ibid.

⁹⁰⁶ Op. cit. Wadud, 2006, p.51.

single source of subjective importance can and often does lead to diverse conclusions then the hermeneutics of the very act of interpretation is emphasised.⁹⁰⁷

Over a period of time, Islamic religious scholars have exercised various methods of assigning several spiritual interpretations to the original verse of lineage in the Qur'an,⁹⁰⁸ but they have not sufficiently addressed the circumstances in which the rules should be formulated socially, rather than spiritually. Similar conditions existed in pre-Islamic Arabia, where the disarrayed social practices of *jihallahia* were broadly changed because they were at odds with the changing patterns of Islamic social culture.

Some eminent Muslim writers, such as Dr. Iqbal, prefer reviewing the existing interpretations of the allegorical verses of the Qur'an through the principle of *ijtihad*, rather than to reinterpret authoritatively *de novo*. According to Bishop Nizar Ali, the principles of *Ijtihad* have not been exercised since the third century of Islam.⁹⁰⁹ However, Iqbal has not sufficiently explained how to apply the principle of *Ijtihad*, even though he has strict reservations about the interpretations of the Qur'an and Hadith. According to Mehran Kamrava:

“The fundamentalists, however, have a very literalist interpretation of the Qur'an, as if the sacred text remained frozen in time and place. Their *Ijtihad*, therefore, seeks to revive an original Islam that is unencumbered by centuries of what they perceive as misguided interpretation.”⁹¹⁰

Iqbal has pursued orthodox deliberations to their logical conclusions when explaining the significance of *ijtihad*, not through impetuous and impatient surmising, but by ‘independence and the scope of their scholarly and intellectual freedom’.⁹¹¹ “And those who strive in Our [cause] – We will certainly guide them to

⁹⁰⁷ Ibid. p.95.

⁹⁰⁸ Qur'an 25:54.

⁹⁰⁹ Nizar, A. M., 1983. *Islam, A Christian Perspective*. Exeter: The Paternoster Press, pp.50-51.

⁹¹⁰ Kamrava, M., 2006. Introduction Reformist Islam in Comparative Perspective. In: *The New Voices of Islam Rethinking Politics and Modernity*. Berkeley, CA: University of California Press, p.10.

⁹¹¹ Esposito, J. L. and Voll, J. O., 2001. *Makers of contemporary Islam*, New York: Oxford University Press USA, p.9.

Our paths: for verily Allah is with those who do right.”⁹¹² According to Iqbal, this Qur’anic verse lays a heavy emphasis on the Islamic jurisprudence principle of *ijtihad*, which literally means to exert and to form an independent judgement on a given issue. Bishop Nazir Ali mentions in passing the name of the famous writer Abduh,⁹¹³ who advocates the call for a new *ijma*,⁹¹⁴ “keeping modern conditions in mind and basing itself on the spirit of the Quran and the true Sunnah”.⁹¹⁵

Amina Wadud elaborates the significance of Islamic history by stating that:

“... Islam as an historical movement starting over fourteen centuries ago was intended to establish and sustain a just social order. At different times throughout its past, it was successful in meeting that intention in many ways. It also met some failures. From both its successes and failures we learn neither just nor is Islam static.”⁹¹⁶

Amina Wadud does seem to place a different reflection on the question of *ijtihad* by stating that:

“Speaking one’s mind is an exercise in autonomy and agency, but the practice of *ijtihad* has its own equally compelling ethics, the most essential and basic of which is well embodied by the meaning of the word itself, which is: to exert and exhaust oneself in the pursuit of thought and knowledge in search of Divine will.”

She continues:

“Without question, Muslims ought to be free to speak their minds and voice their opinion, but it is a different thing altogether to pretend to speak the mind of the Divine and, instead of humbly voicing one’s opinions, presumptuously

⁹¹² Qur’an 29:69.

⁹¹³ Muhammad Abduh was an Egyptian jurist, religious scholar and liberal reformer and is regarded as the founder of Islamic Modernism. His recent book entitled *Islam and Liberty* regards him as the founder of the so-called Neo-Mutazilism.

⁹¹⁴ Consensus of opinion.

⁹¹⁵ Op. cit. Nizar, 1983, p.50.

⁹¹⁶ Op. cit. Wadud, 2006, p.xiii.

endowing oneself with the voice of God. I think the current state of affairs in the Muslim world is a living proof of the chaos and confusion that is borne when people lose their sense of self respect, which is the only real barrier against people speaking out of ignorance.”⁹¹⁷

Eposito is of the opinion that the conservative Islamic scholars are gradually losing their authority of being the sole interpreters of the Qur’an and Hadith, as they have to put up with modern reformists and secularly educated intellectuals in explaining to them their acute ‘defensive conservatism’.⁹¹⁸ In the opinion of Farideh Farhi:⁹¹⁹

“At the core of the religious intellectuals’ view of history is the concept of *rupture*; a social break that transforms societies from harmonious to conflictive. In the rhetoric of the time, this view is employed as a means of trying to convince religious conservatives that they must aspire to a more harmonious situation than now exists. The plea is that they refocus their efforts on what is essential in religion and that they discard what is (to list an assortment of expressions) accidental, variable, external, unstable, corruptible, and harsh in current religious interpretations. To do so, it is asserted, is the only way to maintain the influence of the religious experience in the modern world.”⁹²⁰

Reinterpretation of existing allegorical verses of the Qur’an does not change the importance or emphasis placed on established faith into the unseen and unknown. The practical deduction from the above-mentioned historical facts is that the essence of the Islamic religion has been to establish faith into the unseen and unknown, and through the ages, known and unknown textual facts were described by the application of rationalism.⁹²¹ “Religion is not a departmental affair; it is neither mere

⁹¹⁷ Ibid. p.xiii.

⁹¹⁸ Op. cit. Eposito and Voll, 2001.

⁹¹⁹ Farhi, Farideh. ‘Religious Intellectuals, the “Woman Question”, and the Struggle for the Creation of a Democratic Public Sphere in Iran’. Author(s): Farideh Farhi. Reviewed work(s): (2001) Source: *International Journal of Politics, Culture, and Society*, Vol. 15, No. 2, pp. 315-339.

⁹²⁰ Ibid.

⁹²¹ Whitehead, A. N., 1926. *Religion in the Making*. A series of four lectures delivered during February, at the King’s Chapel Boston, USA. The third on ‘Body and Spirit’.

thought, nor mere feeling, nor mere action; it is an expression of the whole man.”⁹²² The ‘whole man’ expresses his own identity not by lineage but by his conduct, attitude and behaviour. His wholeness cannot be eclipsed by an inadvertent or uncontrollable urge ending in the incident of *zina* and adultery over which he lost his control momentarily.

Again, to resist a review or reinterpretation and to keep to existing religious guidelines with a strain of negative logical attitude is to refuse the successive stages of acquired knowledge. Without the acquisition of knowledge, the complete authority over mental thought may never be possible. Modern reproductive technologies became possible only through knowledge. Whilst the world is perpetually changing and advancing, so too is knowledge constantly being improved and enhanced. To deny, refuse or ignore so can be an unbecoming attitude towards knowledge. Instead, a consistent approach of rationalism towards knowledge can be universally desirable and beneficial.

In addition, the acquisition of knowledge enables the most fundamental categories of human existence such as time, space and causality to progress and outgrow further. There is a famous Qur’anic verse: “Verily never will Allah change the condition of a people until they change it themselves.”⁹²³ Sticking to centuries-old interpretations of established Islamic principles is neither prudent nor does it help to grasp and adapt to new scientific reproductive developments. According to Dr. Iqbal, the gradual process of adjusting with the past and bringing it abreast with modern innovative developments is only prudent. The existing interpretation of religious revelations by Islamic religious scholars has been too enduring and dominant to be rejected as a mere illusion.⁹²⁴

This thesis has argued in the previous chapter the roles of Muslim ‘conservatives’ and ‘traditionalists’ towards the review, reinterpretation and if needed amendment of existing Shari’ah laws in order to incorporate modern human reproductive technologies and other scientific innovation for the benefit of Muslims living in

⁹²² Op. cit. Iqbal, 1954, p.2.

⁹²³ Qur’an 13:11.

⁹²⁴ Op. cit. Iqbal, 1954, p.16.

secular societies. In addition, various points of view have been expressed by ‘conservatives’ and ‘traditionalists’ towards the reinterpretation of allegorical verses of the Qur’an. Abdullah Saeed distinguishes a further three groups as ‘textualists’, ‘semi-textualists’ or ‘contextualists’, who according to him fall into the same category of activists.⁹²⁵

Textualists, for example, argue for a ‘literal’ reading of the Qur’an and believe that its message should remain ‘pure’ and should not be subordinated to the pressure brought about by modern societies. Semi-textualists differ from textualists and make minor concessions towards the demand of incorporating innovative changes brought about by, for example, modern scientific human reproductive technologies. Against the textualists’ claim that all inherited interpretations of the Qur’an’s ‘ethico-legal’ texts are fixed and cannot be changed,⁹²⁶ the contextualists, even though being heavily criticised by textualists and some others, liberally accommodate the reinterpretation of ‘ethico-legal’ texts of the Qur’an. Reinterpretation and review, in their opinion, can make it compatible with the successive progression of the modern world. They largely base their reasoning on the changes brought about, for example, by modern human reproductive technologies which did not exist as an essential part of Islamic culture at its inception.⁹²⁷ Therefore, certain reinterpretations of the Qur’an can be adapted in order to nestle amicably into harmonised, pluralistic and liberating societies. It would thus also afford an opportunity to contribute.

It is not the first time that Islamic scholars have been invited to embark upon this exercise. A number of examples of the reinterpretation of Qur’anic verses made by the Companions can also be traced from the formative period of Islam, and thereafter, changes were made by some other leading figures of later generations.⁹²⁸

⁹²⁵ Saeed, A., 2008. Some Reflections on the contextualist approach to ethico-legal texts of the Qur’an. *Bulletin of the School of Oriental and African Studies*, 71 (2): 221-237. p.221.

⁹²⁶ Ibid. pp.123-124.

⁹²⁷ Ibid. p.122.

⁹²⁸ Rahman, S. S. A., 1982. Jurisprudence a la Umar its contribution and potential. *Islamic and Comparative Law Quarterly*, 2 (4): 241-249. This article clearly lays out Qur’anic rulings relating to one of the pillars of Islam, accepted by Muslim jurists as immutable. Among these rulings is a list of eight categories of possible recipients of *Zakat* payments, including ‘those whose hearts need winning over’ (Qur’an 9:60). Umar ibn al-Khattab adopted a more pragmatic approach to *Zakat*. He decided that Islam was no longer in need of the support of these tribal leaders and so refused to give them their

Perhaps the most important one was when Umar ibn al-Khattab refused to distribute the booty of land in Iraq to the conquerors, even though it was clearly ordained in the Qur'an.⁹²⁹ He based his contention that the circumstances had changed and 'public interest demanded' it more than the way it had been ordained in the Qur'an, so he adopted a different way.⁹³⁰

Within the last two decades a range of reformers⁹³¹ have "shed light on the Qur'anic perspective in relation to some important contemporary issues".⁹³² For example, amongst feminists, Fatima Mernissi⁹³³ seems to join ranks with Farid Esack⁹³⁴ in pleading pluralism. Neo-modernists like Fazlur Rahman, a proponent for the humane interpretation of Islam, is seem to align with Khaled Abou El-Fadl⁹³⁵ and to share participation and contributions in Western societies. A Western citizen, Prof. Tariq Ramadan, gives the impression of sharing his viewpoints with Hasan Hanafi.⁹³⁶ All

share of the *Zakat* fund. This was a clear departure from the earlier example of the Prophet Mohammad, who had in the case of *Zakat* implemented a literal reading of the Qur'anic instructions. Umar's reasoning appears to be associated with emphasising the objective behind the Qur'anic instruction, not its literal reading. For him, when circumstances changed, while the underlying objective should be retained, there was no need to apply it literally. Abd al-Salam al-Sulaymani, 1996. *al-Ijtihad fi al-Fiqh al-Islami*. Rabat, Morocco: Wuzarat al-Awqaf, pp.132-133.

⁹²⁹ Qur'an, 8:41. "And know that out of all the booty that you may acquire [in war], a fifth share is assigned to Allah – and to the messenger, and to near relatives, orphans, the needy, and the wayfarer – if you do believe in Allah and in the revelation. We sent down to our servant on the day of testing – the day of the meeting of the two forces. For Allah has power over all things."

⁹³⁰ Yusuf, Abu, *Kitab al-kharaj*, al-Qahirah: al-Matba'ah al-Salafiyyah, 1352/1932, p.35.

⁹³¹ For instance, Taji-Farouki, S., ed., 2004. *Modern Muslim Intellectuals and the Qur'an*. Oxford: Oxford University Press; Safi, *Progressive Muslims*; Esack, F., 1997. *Qur'an, Liberalism and Pluralism: An Islamic Perspective on Inter-Religious Solidarity against Oppression*. Oxford: Oneworld; Rahman, 1984.

⁹³² Op. cit. Saeed, 2008, p. 226.

⁹³³ Fatima Mernissi is an Islamic feminist writer, largely concerned with Islam and women's roles in it, analysing the historical development of Islamic thought and its modern manifestation.

⁹³⁴ Farid Esack is a South African Muslim scholar, writer, and political activist. He is a strong advocate for inter-religious dialogue.

⁹³⁵ Khaled Abou El Fadl is one of the most important and influential Islamic thinkers in the modern age. He is one of the world's leading authorities on Islamic law and Islam, and a prominent scholar in the field of human rights.

⁹³⁶ Prof. Dr. Hassan Hanafi is a professor and chairs the philosophy department at Cairo University. He is a leading authority on modern Islam.

these eminent writers have one common objective, that “as time changes, there is always the possibility of change in the norms, values and practices of societies”.⁹³⁷

In fact, the broader interpreting approach can lend a more holistic meaning to many of the original interpretations of Qur’anic verses. By retaining the existing interpretations in their *status quo* position and not recognising the successes brought about by modern scientific successes in human reproductive technologies may give the impression of these being unrealistic and incomplete. Stoning of adulterous women to death, cutting off the hands of a person guilty of theft or beating of wives also fall into this category. Furthermore, from a modern human reproductive technological rights point of view, Islamic inheritance law, which provides a smaller share to women than to men, is commonly considered as discriminatory in modern society.⁹³⁸

In reality, from a broader prospect, the Qur’an is a book of ethics and guidance rather than a book of law,⁹³⁹ underpinning the belief in and worship of one God. It does not seek to set out numerous strict and explicit instructions to regulate the daily life of Muslims. It was revealed in a form that could be understood by ordinary people, reflecting the norms and values of Arabic cultures. Infertile Muslim couples, living in secular societies when confronted with modern human reproductive technologies, feel the need to appraise and to understand the guidance given by the Qur’anic verses. How infertile Muslim couples experience these ‘mental entities’ may vary from couple to couple.⁹⁴⁰

According to Kevin Hart, no text, however simple or familiar, can be understood without some remainder and some meaning which will always be overlooked or reduced.⁹⁴¹ The early interpreters, either advertently or inadvertently, might have been influenced from their certain subjective experiences, values and beliefs when

⁹³⁷ Op. cit. Saeed, 2008, p.224.

⁹³⁸ Shahrour, M., 2006. *The Divine Text and Pluralism in Muslim Societies*. In: M. Kamrava, ed., *The New Voices of Islam*. Berkeley, Los Angeles: University of California Press.

⁹³⁹ Op. cit. Saeed, 2008, p.225.

⁹⁴⁰ Ibid. p.230.

⁹⁴¹ Hart, K., 1991. *The poetics of the negative*. In: S. Prickett, ed., *Reading the Text: Biblical Criticism and Literary Theory*. Cambridge, MA: Blackwell, p.313.

trying to understand and to interpret the allegorical verses of the Qur'anic text.⁹⁴² Therefore, in modern times it is gradually becoming apparent that an interpretation given to the text, although useful, will always remain partial.⁹⁴³ Amina Wadud elaborates that postmodernistic ideas are useful tools for 'rethinking of the past',⁹⁴⁴ as it helps to create a future which can be more pluralistic and heterogeneous.⁹⁴⁵

In addition, Khaled Abou El Fadl is of the opinion that today Islamic law exists as a set of positive commandments (*ahkam*); its epistemological process or its methodological understanding and searching for *fiqh*, are for the most part dead.⁹⁴⁶ He further comments that the Qur'an should remain as a 'work in movement' or an 'open text' to multiple interpretative strategies. He nevertheless remains short of suggesting that the Qur'an should be completely open to any interpretation.⁹⁴⁷ Instead, he elaborates that the meanings of Islamic texts cannot remain fixed and that these should be justifiably reinterpreted "with a renewed voice to successive generations of readers" if these are to remain relevant.⁹⁴⁸ Because, as soon as a text becomes closed, it is in danger of becoming irrelevant, since readers no longer need to engage with the original to discover its meaning.⁹⁴⁹

In Gibb's estimation, it is within a century that many Muslim scholars started believing that reinterpretation was becoming necessary, but they were of the opinion that this could be achieved only through religious channels.⁹⁵⁰ Sanhuri⁹⁵¹ was of the

⁹⁴² Op. cit. Farid, Esack, 1997.

⁹⁴³ Op. cit. Hart, 1991.

⁹⁴⁴ Op. cit. Wadud, 2006.

⁹⁴⁵ "Muslims, Interview – Amina Wadud", Frontline – PBS, March 2002, Available at: <http://www.pbs.org/wgbh/pages/frontline/shows/muslims/interviews/wadud.html> (Accessed 25th February, 2007).

⁹⁴⁶ Khaled A. El Fadl, 2001. *Speaking in God's Name: Islamic Law, Authority and Women*. Oxford: Oneworld, p.171.

⁹⁴⁷ Ibid. p.155.

⁹⁴⁸ Ibid.

⁹⁴⁹ Ibid.

⁹⁵⁰ Op. cit. Gibb, 1947. pp.104-105.

⁹⁵¹ Abd el-Razzak el-Sanhuri (1895-1971) was an Egyptian legal scholar and professor who drafted the revised Egyptian Civil Code of 1948.

opinion that if it were to become a reality, then it would have to come from outside the religious sphere, but always remain true to the core principles of Islam.⁹⁵²

In Tunisia, President Bourguibe was quite categorical in stating that to liberate from a decadent state:

“... the first step should be to liberate the Islamic religion from its prejudices and obsolete ideas and to retain only those ideas obviously compatible with the interest of the Muslim community. The next step was a phase of research, the result of which would demonstrate to those who were not convinced that this readaptation, these new rules, were not in contradiction with the true precepts, the fundamental laws of Islam. ...”⁹⁵³

The present generation of Muslim scholars can claim the right to interpret fundamental legal principles in the light of individual experiences and the altered conditions of living due to modern scientific development. Dr. Iqbal elaborates the teaching of the Qur’an where ‘life is a process of progressive creation’ necessitating that each generation be ‘guided but unhampered by the work of its predecessors’.⁹⁵⁴ He further states that:

“No people can afford to reject their past entirely; for it is their past that has made their personal identity. And in a society like Islam the problem of a revision of old institutions becomes still more delicate, and the responsibility of the reformer assumes a far more serious aspect.”⁹⁵⁵

However, Kourides is of the view that:

“It is not unreasonable to predict that Muslim nations will gradually abolish the Shari’ah courts, eliminate the need for the qadis, limit polygamy and a

⁹⁵² Kourides, P. N., 1972. Traditionalism and Modernism in Islamic Law. *Columbia Journal of Transnational Law*, 491: 491-506.

⁹⁵³ Ibid. p.502.

⁹⁵⁴ Op. cit. Iqbal, 1954.

⁹⁵⁵ Ibid.

husband's right to repudiate his wife, liberalize divorce for women, and increase in general the rights of women.”⁹⁵⁶

He further states that:

“As modernism demands more profound changes in Muslim legal structure, however, the Muslim scholars will have to turn to the core of their legal heritage and reinterpret the authoritative texts in view of modern needs, and if necessary move against outmoded beliefs.”⁹⁵⁷

Anderson's expressions in this direction can be summarised in four main ways: a) an eclectic technique in providing a synthesis of Islamic and Western legal provisions; b) the use of procedural devices for confining the jurisdiction of the Shari'ah's courts; c) the complete reinterpretation of the authoritative texts in the light of present day needs; and d) overlapping with the first three, the use of legislative enactments to make changes justified by the doctrines of *siyasa* and *maslahah*.⁹⁵⁸

It is, therefore, to reiterate the contextualists' point of view, that as the core teachings of Islam were gradually developed, there remained a need for their continuous review in accordance with the growing needs of the times. It must not be presumed that existing traditions, the sinecure of many preachers and specialists in religious laws, educators and clerics, be discarded, but rather that they should be examined, discussed, and if necessary be reinterpreted.

According to Shahrour, the human mind resembles the function of an umbrella in the need of opening to understand and resolve difficult issues. Muslim scholars need to be open-minded so that they do not decline or pass away without having contributed.⁹⁵⁹ So far, no criticism can be reflected against any individual Muslim

⁹⁵⁶ Op. cit. Kourides, 1972, p.505.

⁹⁵⁷ Ibid. p.506.

⁹⁵⁸ Anderson, J. N. D., 1971. Modern Trends in Islam: Legal Reform and Modernisation in the Middle East. *The International and Comparative Law Quarterly*, 20 (1): 1-21.

⁹⁵⁹ This article is based on a paper presented to the Institution of Ibn Khaldun for Developmental Studies at the conference on “*Islam and Reform: Workshop*”, Cairo, 5th-6th October, 2004.

state as no central authority or individual speaks for all Muslims.⁹⁶⁰ At the same time, to borrow another's glasses to see our own realities does not work.

⁹⁶⁰ Op. cit. Eickelman, 1998, p.89.

Conclusions

The central argument of this thesis has been that the outdated and inappropriate interpretations of Qur'anic allegorical verses have hindered an ethical approach to assisted reproduction. The thesis has considered the background and origin of these interpretations and whether a fresh consideration can be made that does not breach the fundamentals of the Muslim faith, particularly for those Muslims living in a secular society where the range of options available is larger. It has also considered the conflict between traditionalist Islamic scholars and ethical constructs in multi-faith secular cultural systems.

Interpretations of Qur'anic allegorical verses relating to lineage, adoption and adultery have been considered in the light of the principles applied in biomedical ethics.⁹⁶¹ The four principles of biomedical ethics have invariably been in the forefront in determining the ethical behaviour of humans in various religious⁹⁶² and secular societies. Constructive references have been applied when taking into account human conditions within the perimeters of justice and compassion. In doing so, the thesis has also recognised a line of reasoning revealed by Qur'anic verses and the Hadith towards *sirat al-mustaqeem* (right path), *adl* (justice), *rahmah* (compassion), *hikmah* (wisdom), and *ihsan* (benevolence). The discussion has included many modern scholars of Islamic law who make use of the principle of

⁹⁶¹ Op. cit. Beauchamp and Childress, 1994.

i) Respect for autonomy: Does my action impinge on an individual's personal autonomy? Do all relevant parties consent to my action? Do I acknowledge and respect that others may choose differently?

ii) Beneficence: Who benefits from my action and in what way?

iii) Non-Maleficence: Which parties may be harmed by my action? What steps can I take to minimise this harm? Have I communicated risks involved in a truthful and open manner? In the event of a disaster, how can I avert the possible harm caused?

iv) Justice: Have I identified all vulnerable groups that may be affected by my action? Is my proposed action equitable? How can I make it more equitable?

⁹⁶² Tsai, D. F. C., 1999. Ancient Chinese medical ethics and the four principles of biomedical ethics. *Journal of Medical Ethics*, 25: 315-321.

ijtihad, touching essential parts of the Islamic belief of human creation as an essential part of Muslim cultural tradition.⁹⁶³

Many eminent writers have been brought into the discussion of Shari'ah law. For example, Ebrehim Moosa, the 14th-century jurist 'Ibn Qayyimal Jawziyya', describes Shari'ah law as:

“The foundation of the Shari'ah is wisdom and the safeguarding of people's interest, in this world and the next. In its entirety it is justice, mercy and wisdom. Every rule, which transcends justice to tyranny, mercy to its opposite, good to evil and wisdom to triviality does not belong to the Shari'ah although it might have been introduced in it by implication. The Shari'ah is God's justice and mercy among His people.”⁹⁶⁴

However, in the later part of his discussion, Ebrehim Moosa concurs that: “whatever means were used in the past to protect human dignity can undergo change, provided the new measures give effect to justice and fairness, since the essence of Shari'ah is justice.”⁹⁶⁵

The more deeply and the more objectively the arguments are advanced, then they implicitly suggest that the issues around procreation faced by Islamic religious scholars today might be similar to those addressed by their predecessors at the time of the inception of Islam. In contrast, a principal argument of this thesis is that this is not the case and applying solutions to problems addressed by early scholars to those of today misunderstand the nature of those problems. Schacht concurs when he states that:

“As long as the present attitude of the majority of Muslim thinkers, and of the great majority of individual Muslims, towards ancient Arabian law, as endorsed by the Koran, persists, the improvements which have been suggested

⁹⁶³ David, Qur'an & Hadith, 2006, www.indonesiamatters.com/677/quran. (Accessed 26th March, 2010).

⁹⁶⁴ As quoted by Ebrahim, 2000-2001, The Dilemma of Islamic Rights and Schemes. *Journal of Law and Religion*, pp. 185-210.

⁹⁶⁵ Ibid.

and in part been carried out, can be nothing but palliatives. This does not mean that the whole of it is unacceptable to modern ways of thought.”⁹⁶⁶

He further states:

“In other words, the Koranic ‘legislation’, if we can call it that, stood outside the existing legal system on which it imposed moral and not, properly speaking, legal rules.”⁹⁶⁷

One of the areas which is difficult to rationalise is Shari’ah law itself. Although the Qur’an is the basic source of Islamic jurisprudence, it is not intended as a legislative text. The majority of the 6239 Qur’anic verses are metaphorical, allegorical and historical passages, as well as statements of moral principle and religious injunctions. The number of verses dealing specifically with legal issues, however, is usually estimated to be between just 200 and 500. Given the dearth of legal content in the Qur’an, Muslims are not made aware that the interpretation of these verses can be flexible, or can be outmoded in the present times. For a variety of reasons some of the established traditional practices – for example, arranged marriage – are beginning to lose their primary importance. Flogging, stoning to death, the death penalty, as already discussed, might have been suitable when these were prescribed, but are gradually diminishing in their value and purpose. The fervent desire and perhaps erroneous fixation on the part of conservative Islamic religious scholars was to be steadfast with the past, without having a glimpse of the present or visualising that in the future this may not be the right course of action. There is, of course, a famous quote of Charles Baudelaire which states that “you have no right to despise the present”.⁹⁶⁸

In chapter four of this thesis it is argued that modernity, in a sense, is different from medievalism. Modernity can be described as an application of acquired knowledge over a period of time based on authentic tests of reasoning. It unquestionably plays an effective part in improving both the political affairs and religious issues of

⁹⁶⁶ Schacht, J., 1960. Problems of Modern Islamic Legislation. *Studia Islamica*, 12: 99-129.

⁹⁶⁷ Ibid.

⁹⁶⁸ Arianna Bove, quoted ‘you have no right to despise the present’, by Baudelaire, Charles. www.generation-online.org/p/fpfoucault3.htm.

societies. Medievalism retains an ideal dream of living in the past, whereas modernity maintains a gradual progression of rapidity in bringing betterment in social and moral changes. “In medieval times nobody dreamed of social experimentation. Society was something fixed and sacrosanct. Today social legislation is undertaken with a view to organising society on fresh lines.”⁹⁶⁹ Modern guidance is an adaptation to new conditions of life, and thus, “The attempt to pull out Islam from the medieval morass in which it had been entangled”.⁹⁷⁰ Many Islamic writers, such as Ismail, have put forward the suggestion that people should forego their self-convincing beliefs which contain a promise of reward in the hereafter.⁹⁷¹ Almost all the suggestions put forward so far have ended up in a cul-de-sac.

Prof. Tariq Ramadan put it even more succinctly by stating that:

“Relating to ethical goals and seeking consistency in action forbid us to idealise the past, to sanctify the thought of Ulama, and to remain at a standstill in social and political matters; this is clearly an invitation for critical reason to remain always watchful about possible betrayals or perversions of ideals, and at the same time creative about solutions to be found or historical models to be fulfilled.”⁹⁷²

Modern scientific human reproduction developments laid claims of new and successful results, far superior and reliable than those ever achieved before. How long religious institutions hesitate to acknowledge or to co-operate with scientists remains difficult to forecast. Simply to defend religion’s glorious past is far too complete. If nothing else, it leads to gradually lagging behind in benefitting from human reproductive achievements. Modern innovative and successful human reproductive developments need to be acknowledged and adapted to with changing times.

⁹⁶⁹ Siddiqi, M., 1970. General Characteristics of Muslim Modernism. *Islamic Studies*, 9 (1): 25-34.

⁹⁷⁰ Ibid.

⁹⁷¹ Ismail, M. P., ed., 1961-3. *Maqalat-i Sir Syed*. Lahore, vol. X, p.50. A suggestion implied by Sir Syed and quoted in Siddiqi, 1970.

⁹⁷² Ramadan, T., 2009. *Radical Reform, Islamic Ethics and Liberation*. Oxford: Oxford University Press, p.272.

Various civilisations throughout human history have struggled to define the mechanisms that would facilitate in governing their interrelations more satisfactorily. The notion of secularisation, as perceived today, may be a modern addition to it. Humanity, in pursuit of defining roles, aims, responsibilities and rights, comes closer and closer to solutions for the betterment of lives and health. The stunning and sudden success of modern scientific human reproductive technologies made the conservative religious scholars remain on the defensive. According to Ameer Ali, Prophet Mohammed himself foretold that a time would come when the accidental and temporary regulations would have to be differentiated from the permanent and general.⁹⁷³

According to Souaiaia, living in isolation is simply not an option either during ancient times or in the modern world.

“The world is made out of communities, each with its set of values and norms, but those values and norms must pass the test of universality in order to survive. Some norms may stubbornly persist in isolated pockets, but they certainly cannot lead universally, for that role is for the fittest and best amongst the collective.”⁹⁷⁴

Since the inception of the universe the gradual betterment of humanity has been largely dependent upon knowledge and the advancement of intellectual growth. It is the free flow of knowledge and not the defensive steadfastness of religious tenets which has enabled scientists to discover how to alleviate infertility through modern human reproductive technologies. “History does recycle itself, and communities do pass the baton to each other in this everlasting marathon.”⁹⁷⁵ Equally, post-modernism promises hope, understanding and toleration. This is where it connects with Islam.⁹⁷⁶

⁹⁷³ Ameer, A. A., 1890. *Life and Teaching of Mohammad or Spirit of Islam*. Calcutta, p.374.

⁹⁷⁴ Souaiaia, Ahmed, E., 2003. *Human Rights and Islam*. University of Washington, iUniverse, Inc. New York.

⁹⁷⁵ Souaiaia, A. E., 2003. *Human Rights and Islam*. New York: University of Washington, iUniverse, Inc.

⁹⁷⁶ Op. cit. Ahmed, 1992, p.33.

Besides lineage, identity and adoption, the other three areas which this thesis has touched upon in pursuance of its argument are as follows:

Firstly, the difficulties infertile Muslim couples have encountered were largely brought about by the influx of migration or the mass movement of people. They drifted away from the 'four principles of bioethics' as described by the 13th century Muslim scholar Mawlana Sahin Aksoy⁹⁷⁷ to the four principles of bioethics as established by Beauchamp and Childress. There was also a brief discussion on tracing the roots of Muslim people in the UK and their claim to retain an essential part of Muslim traditions.⁹⁷⁸

The argument was also contrasted with the modern understanding of genetics that has shifted the focus further from lineage, placing undue importance on the biological machinery of genes, rather than on social and family relationships. Not only is this misleading, but in the modern context it is unnecessary. In relation to genes, Islamic identity also came under review. It was explained that cultural heritage and affiliation has a common historical alignment with a shared purpose in a sense of belonging rather than individual uniqueness. It was explained that genes simply encode proteins and they do not produce families and cultures. Far from producing a sense of belonging and togetherness, this view produces a sense of isolation.⁹⁷⁹ The discussion was brought to a point where it became necessary to enquire whether a Muslim remains a Muslim should he deviate from religious teachings. The rational answer was that the possession of faith alone was sufficient for a person to be defined as a Muslim and other ritual works were not essential.⁹⁸⁰

Secondly, at its inception, Islam made a wide cultural sweep of the existing Arabic *jahiliya* customs and tradition. Although such expedited sweeps rendered the demise of varied local systems, they nevertheless cast adverse effects on the rights and

⁹⁷⁷ The 'four principles of bioethics' as found in 13th century Muslim scholar Mawlana's teachings, Sahin Aksoy'Ali Tenik. Available at: www.biomedcentral.com/1472-6939/3/4 (Accessed 18th August, 2008).

⁹⁷⁸ David, Qur'an & Hadith, 2006, www.indonesiamatters.com/677/quran. (Accessed 26th March, 2010).

⁹⁷⁹ US National Library of Medicine National Institutes of Health, Bookshelf ID: NBK26818.

⁹⁸⁰ Rahman, 1979, p.86.

freedoms granted to Muslim women under the Qur'anic verses. Patriarchal suppression exerted a powerful influence on the shaping of women's gendered subjectivity.⁹⁸¹ Historically, Islam has imposed a patriarchal relationship with an emphasis on the male line, although this was not the intention of Prophet Mohammad, who appeared to have regarded the emancipation of women to be essential. It has been observed during the course of the arguments and discussions that women have enjoyed more freedom, autonomy and a sense of independence in their marital status than that initially granted to them after the revelation of the Qur'anic verses.⁹⁸²

Kandiyoti puts forward yet another interpretation by stating:

“Thus when classic patriarchy enters a crisis, many women may continue to pressure men to live up to their obligations and will not, except under the most extreme circumstances, compromise the basis for their claims by stepping out of line and losing their respectability. Their passive resistance takes the form of claiming their half of this particular patriarchal bargain – protection in exchange for submissiveness and propriety, and a confirmation that male honor is indeed dependent on their responsible conduct.”⁹⁸³

Conversely, according to Maxine Molyneux, the breakdown of classic patriarchy may be equally threatening to women, however, who often resist the process of change because they see the old normative order slipping away from them without any empowering alternative. In a broader discussion of women's interests, Maxine

⁹⁸¹ Kandiyoti, D., 1991b. Islam and Patriarchy. In: N. Keddie, B. Baron, eds., *Women and Middle Eastern History: Shifting Boundaries in Sex and Gender*. Yale University Press, p.27 (currently unavailable).

⁹⁸² Qur'anic verse:

a) 2:223 “Your wives are as a tilth to you so approach your tilth when or how you will: But do some good act for your souls beforehand; and fear Allah, and know that you are to meet Him [in the hereafter], and give [these] good tidings to those who believe.”

b) 4:34 “Men are the protector and maintainers of women, because Allah has given to one more [strength] than the other, and because they support them for their means. Therefore, the righteous women are devoutly obedient, and guard in [the husband's] absence what Allah would have them guard. As to those women on whose part you fear disloyalty and ill-conduct, admonish them [first], [next], refuse to share their beds, [and last] beat them [lightly]; but if they return to obedience, seek not against them means [of annoyance]: for Allah is Most High, Great [above you all].”

⁹⁸³ Op. cit. Kandiyoti, 1991b, p.36.

Molyneux suggests that this way should not be put down merely to “false consciousness”, but to the possibility that changes have been realised in a piecemeal fashion. It “could threaten the short-term practical interests of some women, or entail a cost in the loss of forms of protection that are not then compensated for in some way”.⁹⁸⁴

Thirdly, a brief incursion into Muslim women’s fundamental rights revealed the difficulties they face to attain their granted fundamental human rights in terms of equality and freedom. As already explained, traditionally, a Muslim woman loses her self-identification and self-expression immediately upon marriage. All her rights and freedoms are eclipsed under patriarchal oppression. She is supposed to be deaf and dumb, completely incarcerating her feelings of self-identity and even within her own culture, “a woman [doubly subjugated] is already the Other; her identity ceases to be stable”.⁹⁸⁵ In other words, isolation and hardship vary in relation “to the degree of endogamy in marriage practices”.⁹⁸⁶

It has become difficult to disbelieve when Unni Wikan reveals that:

“Indeed, many of the constraints and limitations imposed on women, such as the *burqa* [veil], restrictions of movement and sexual segregation, are seen by women as aspects of their very concern and respect on the part of the men which provide the basis for their own feeling of assurance and value. Rather than reflecting subjugation, these constraints and limitations are perceived by women as a source of pride and a confirmation of esteem.”⁹⁸⁷

Again, the veil or *Hijab*, according to Islamic tradition and cultural systems, has been appraised in three dimensions; it is applicable to hide something from visual sight, it is to design a demarcation of a border in its spatial dimension, and it is to

⁹⁸⁴ Molyneux, M., 1985. Mobilisation without Emancipation? Women’s Interests, the State and Revolution in Nicaragua. *Feminist Studies*, 11: 227-254.

⁹⁸⁵ Op. cit. Ghaussy, 1994.

⁹⁸⁶ Op. cit. Kandiyoti, 1991b, p.31.

⁹⁸⁷ Op. cit. Wikan, 1991, p.184.

hold the position in a forbidden sense, instituting an understanding of piety and respect in relation to other persons.⁹⁸⁸

Nevertheless, Fazlur Rahman's opinion cannot easily be ignored when he asserts that:

“At present Islamic intellectualism is virtually dead, and the Muslim world presents the uninviting spectacle of a vast intellectual desert in the depths of whose wilderness there hardly stirs a thought, but whose deadening silence itself may sometimes resemble the apparition of a flutter.”⁹⁸⁹

Prof. Tariq Ramadan enlarges the point by stating that:

“Indeed, on the one hand, one admits that the world is changing and one agrees to change with it, but what is primarily expressed on the other hand is that one ‘adapts’ to what the world is becoming as if that were fated. What matters would then be to protect one’s ethics in the face of an evolution one acknowledges without going so far as to dispute the very nature of that evolution.”⁹⁹⁰

Again, Prof. Ramadan succinctly observed that:

“In the meantime, one does not seem to realise that such reforms, which adapt to the present system, fail to question the system in its essence, in its objectives, and most of all in its consequences. The reverse is true because adapting to such a system amounts to endorsing its reality, or its domination, or both. ... Adapting does not – or does not necessarily – mean questioning, criticising, or challenging. Such are the limits and contradictions inherent in the adaptation reform that has nurtured contemporary Islamic reformist thought of the past decades, and it is the rapidly increasing complexity of knowledge

⁹⁸⁸ *Encyclopaedia of Islam*, 2nd edn, section on ‘Hidjab’.

⁹⁸⁹ *Op. cit.* Rahman, 1979, p.263.

⁹⁹⁰ *Op. cit.* Ramadan, 2009, p.32.

for the past decades that has naturally exposed this dilemma to the believing conscience.”⁹⁹¹

Finally, this thesis has argued how hard it is not to agree with the urgency of reviewing the existing established Shari’ah law to reconcile and accommodate the fast and successful development of modern reproductive technologies. It has become evident that the trend already set is difficult to reverse, and it is almost exclusively directed against the modernist treatment of Islamic history.⁹⁹² Some change in the *modus operandi* of the Islamic legal system is needed to address these problems. Perhaps some of the paramount difficulties facing Islamic religious scholars when endeavouring to resolve these issues, are not just adapting modern human reproductive technological issues to the Islamic past, but to emphasise, modify, and if necessary to deflate and co-ordinate also with the current developments. Most modern Islamic writers, especially Fazlur Rahman, are of the opinion that the review, change or reinterpretation of existing Shari’ah law is inevitable and that thinking in this direction is becoming irreversible. “The more sober and realistic elements must rise to the occasion and guide this change which otherwise surely poses a most serious threat.”⁹⁹³ Legal rules are founded on causes and purposes, when those effective causes are diminished or over, then legal rules begin to fade or no longer exist. Thus, laws change according to changing times, places and circumstances, and Shari’ah law should not be different if it is to be responsive to the present reproductive needs of infertile Muslim couples.

From the foregoing arguments and discussions, it is clear that modern scientific human reproductive technologies have presented new problems in relation to fertility as part of Islamic religious cultural systems. But sadly, having argued and discussed ethically, socially, morally, judicially, and comprehensively, with the aid of various text books and by making reference to many articles of eminent writers, my enquiry still remains unresolved.

⁹⁹¹ Ibid. pp.32-33.

⁹⁹² Op. cit. Gibb, 1947.

⁹⁹³ Op. cit. Rahman, 1979, p.234.

There is no specific or final answer to the issue involved. If there is an answer, it does, as submitted, lie in the congregation of doctors, physicians, economists, sociologists, and religious alims, who are competent in their respective fields. They should recognise and accept each other's respective fields of knowledge (Ilm) in finding an enduring answer, by integrating into intellectual discussions, leading to meaningful, practical and effective contributions, which are "becoming crucial and urgent".⁹⁹⁴

This consideration, devoting sufficient time to appraise, understand and appreciate the issues involved, will diminish the misunderstandings between religion and theology and modern reproductive science. More work needs to be done to prevent stereotypic assumptions about Islamic ethics acting as barriers to legitimate access to fertility treatment. The lack of unremitting desire of such discussions and the absence of scrutinising eyes is leading to insensible widening of the scientific and religious gulf. Religion and science did not set out to survive independently, and more studies should focus on bringing about a better understanding in science and clinical practice.

⁹⁹⁴ <http://Muslim-canada.org/biotechnical.htm>s, accessed 18th December, 2008.

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