*In Vitro Fertilization: A Shi'ah Demonstrative Jurisprudence Approach*

## *Contributor:*

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# Foreword

This booklet originates from written material that the author delivered during a teaching course (Kharij) to his students in Qum/I.R.Iran, from the year 2005 onwards. He taught Kharej Makasib to his students while referring to the illegal gains within economic activities according to the Shari'ah Law. He delved into the depth of this topic providing, with demonstrative arguments, what Shi'ah jurisprudents state with regards to this issue.

We believe it is important to know how the Shi'ah jurisprudents deal with this topic, realize the different types of ART and how the author of this book has referred to those dissimilar cases throughout his jurisprudential arguments.

ART or 'assisted reproduction technology' is an inclusive term for any contemporary aid to facilitate conception and the ultimate successful reproduction for those people who would otherwise be considered infertile and unable to produce offspring. It is become popularised only fairly recently, after England produced the first child born using methods other than those of the natural. Prior to this occurrence, Shi'ah scholars continuously insisted that these hypothetical forms of ART despite having different rulings could be awarded and classified equally under the same technical concept, depending on the method of application. The rulings vary and may applied taking into consideration all the details of the relevant case. The author

has emphasised in the introduction that he does not intend to extensively discuss all potential cases and possibilities, as they might be relatively theoretical and not practiced at all.
Here we find of extreme importance to highlight the technical terms that have been used within medical milieu comparing them with the relevant discussion and the cases and the arguments that have been implemented in this demonstrative jurisprudential text. We hope that this foreword would serve the wider English readership and various members from both medical and non-medical milieu.

**ART: Methods:**

- **IVF; In Vitro Fertilization**

Since there are two types of IVF, the ordinary and the mini-IVF, we will first describe the latter, and then proceed with the former, as it is the main topic of our discussion.

- **Micro-IVF**

Sometimes known as the mini-IVF, this is a scaled down and more economical version of the full IVF procedure and being cheaper has mass applicability, despite being unsuitable for couples who require the full IVF. Micro-IVF uses lower doses of medications and involves fewer monitoring sessions of the developing embryos. For couples considering IVF treatment, micro-IVF may be a good choice although few studies have been done to prove its effectiveness. Therefore we will not discuss it, focusing on the first more widely spread type.

- **In Vitro Fertilization**

In vitro fertilization subjects the ovaries of the potential mother to first undergo treatment by potency drugs with a view to increasing egg production. Any subsequent eggs are then harvested and placed together with healthy active sperm in petri dishes under stringent monitored laboratory conditions. Any successfully formed zygotes (fertilized eggs) are then introduced into the womb. This case was referred to in the author's discussion as in the cases discussed under point number 1.

**Additionally,** variations exist to facilitate the process of conception and production of offspring and may be tailored to an individual couple's requirements. These take into account factors such as age, success and failure records and anything relevant to make the production of children to an otherwise barren couple, fruitful. They are as follows:

- **Intracytoplasmic Sperm Injection (ICSI)**

Unlike basic IVF, in the case of ICSI, an individual sperm is inserted directly into an egg via a specialized needle. ICSI may be used in severe cases of male sterility, as in abnormal sperm morphology (sperm shape damage) or in cases of very low healthy sperm count. Sometimes doctors suggest that males with abnormal sperm morphology be injected with certain enhancing and strengthening drugs. The author did not discuss these cases but however referred to them as to be unanimously

agreed upon by Shi'ah jurists. He referred to them after initially explaining the second case of the general cases.

As a last resort for sterile males, doctors may suggest ICSI for those whom the injection did not prove fruitful. In conclusion, ICSI must be used in severe cases of male sterility and/or in the case of testicular sperm extraction (TESE). The author has referred to these cases under point 1, more specifically 1.4.

- **Pre-implantation genetic diagnosis (PGD)**

During this procedure, a couple of cells are removed from an embryo, and tested for genetic diseases, before introduction of the embryos to the womb. This is a technique available for use in cases of recurrent miscarriage or to by-pass inheritance of a deadly genetic disease, specifically for high-risk couples although reducing the risk does not guarantee any offspring immunity from inherited disease. A controversial use of the procedure is to select embryos with particular traits, physical and potentially intellectual. However, this procedure is not in widespread use; 'designer baby' production is not yet a thing of the present. The author has completely ignored this phenomenon, and deemed it not important to refer to.

- **Assisted Hatching (AH)**

Assisted Hatching is a term given to a process of helping the embryo literally to hatch out of the original fertilised cell, a phase that naturally occurs during the blastocyst developmental stage. A tiny hole is made in the outer embryonic layer - known

as the 'zona pellucid'- with a laser or acid, before introduction of the zygote into the womb, with the hope of easing implantation into the uterus wall.

This technique has only been found useful to older prospective mothers or ones who having previously unsuccessful IVF attempts. The author has in all probability referred to these cases under point 1.1 and possibly 1.2.

- **In vitro maturation (IVM)**

Some women are more prone than others to develop complications from Ovarian Hyper Stimulation Syndrome (OHSS) due to the presence of fertility drugs in regular IVF treatment. The fairly new In Vitro Maturation treatment or (IVM) is far safer for the prospective mother, as immature eggs, or oocytes, are immersed in a special hormonal solution, to enable them to reach full maturity in laboratory conditions. It is not necessary for the mother to take fertility drugs, or if so, she need only take very low doses. IVM may be suggested for women with Poly Cystic Ovary Syndrome (PCOS) as they are at a high risk for (OHSS), younger women who do not have trouble with ovulation, or cancer patients wishing to freeze their eggs or embryos for future use. It may also be used to mature eggs retrieved during regular IVF, which were not yet ready for fertilization.

- **Autologous Endometrial Coculture (AEC)**

This Assisted Reproductive Technology involves placing a fertilized egg on top of a layer of endometrial cells taken from the lining of the womb by means of an endometrial biopsy. The cells are then treated and frozen, until they are needed during the IVF treatment. AEC is a suitable treatment for couples with a history of IVF failure, poor implantation, or poor embryo quality.

- **Cryopreservation**

In the context of an Assisted Reproductive Technology, Cryopreservation refers to any situation when embryos, eggs, ovarian tissue, or sperm are frozen for later use. After cryogenic freezing sperm has a better survival rate than embryos which in turn have a better survival rate than unfertilised eggs; however, ovarian tissue freezing is still very much in its infancy. Any surplus embryos created during this process can be frozen for possible future use. Sperm and unfertilised eggs may also be frozen before IVF treatment for a number of practical reasons.

- **FET (Frozen Embryo Transfer)**

One major advantage of storing surplus embryos from a prior IVF is to mitigate the need to repeat the entire process with its expense and discomfort on the part of the subject (i.e. the mother) if, for example, the first attempt fails, or for the purpose of having more children in the future. However, this is complicated by the variable success rates of embryos surviving

the freezing and thawing. Some studies have found FET to be less effective than fresh embryo transfer, while others have found it to be more effective.

In this procedure, the potential mother will take additional hormones to bolster the uterine lining prior to implantation of the thawed embryos are transferred to her womb. The author was possibly referring to these last four cases after highlighting and having discussed the five different categories of ART, when he delved into the possibilities of having some zygotes, sperms or eggs frozen for future use.

- **Blastocyst Transfer (BT)**

A fertilized egg or embryo is initially a small group of cells, which promptly divide and multiply. The blastocyst stage is reached by the fifth day, when a fluid cavity forms and separation occurs between the placenta forming tissues and those that will develop into the foetus. Some practitioners prefer to wait for this stage before transference to the uterus. Not all embryos survive to this stage but those that do are considered healthier than those who failed to make the grade, and fewer blastocysts are left to be transferred, decreasing the likelihood of multiples. On the other hand, embryos that may have been successfully transferred at an earlier stage might die before reaching the blastocyst stage, leaving the couple with nothing to transfer. It is due to this fact that Blastocyst transfer is usually combined with having many zygotes and/or embryos that can potentially develop into customary children. Only one of them

will be transferred to the uterus for final growth and development. Therefore, Shi'ah jurists were constantly approached as what would be the Shari'ah ruling with regards to those blastocyst embryos left to die. The author has not discussed these side effects, but has referred to the cases that are identical to this medical practice under points 1.1, 1.4, while 1.6 is specified with the condition that the embryo shall remain outside the natural womb environment. The case here under discussion, i.e. **B.T.,** is when the embryo is rather transferred, albeit at a later stage to the uterus.

- **Donors**

One particular trend prevalent in current society is seeking donors for sperm, eggs and embryos. Sperm donors are sometimes sought for cases of male infertility, or when a single woman wants to conceive. Egg donors are similarly sought in cases of poor ovarian reserves, medical conditions that have impaired fertility, or age related infertility in order to increase likelihood of conception. As in all cases, an egg donor could be known to the subject or found through a fertility clinic or an agency.

The author has discussed these cases under category four, with all its potential cases taking them into consideration from the Shari'ah Law angle.

- **Using a Surrogate**

Surrogacy has also been used by the desperate. If, for some reason, a woman's uterus is unable to carry a pregnancy or has been removed, but still possesses intact ovaries, her eggs, and her husband's seed, can produce embryos which can be transferred into a surrogate's uterus. In other surrogate arrangements, surrogate mothers have used their own eggs in which case, Artificial Insemination may be used to transfer the relevant sperm to the surrogate's uterus.

The author has referred to this case under point 1.5, and under category four and five with all relevant different options.

- **Gamete Intrafallopian Transfer (GIFT)**

This is basically an alternative to the core IVF process, which instead of the eggs being fertilized in vitro, and subsequently implanted into the womb, here, the unfertilised egg and sperm are directly inserted into the fallopian tubes. Any fertilisation would then take place inside her body. This requires specialist surgical techniques to transfer the egg and sperm into the fallopian tubes. The main purpose of this is to overcome any religious objections to having fertilization take place outside the body. This is very rarely used (at most only 1% of all ART). As such, the author has not referred to it all.

- **Zygote Intrafallopian Transfer (ZIFT)**

Another seldom used procedure, which also involves the 'keyhole surgery' technique used by GIFT is Zygote Intrafallopian Transfer or ZIFT which differs by transferring a zygote, successfully formed in the laboratory, to the fallopian tube. This procedure is hardly used as can be seen from statistics denoting a mere (1.5% of all ART). This case was also not referred to at all by the author, due to its uncommonness.

**Cloning**

The above discussed cases are the main ART as have been practiced during the last century; however, a new pioneering method and process was developed to produce the likes of 'Dolly the Sheep'. This same technological process may perhaps be applied to human reproduction. The technique was partially successful and some saw it as merely a stage towards applying a similar technique to human embryos and even possibly to facilitate a way to grow replacement human organs. Some recent jurisprudential research has been done on this topic, and if we were to mention any, I would refer to the approach that has been written down by a contemporary Shi'ah scholar. The book is entitled: '*al-Istinsākh al-basharī wa-mawqif al-sharī'ah al-Islāmīyah*' by Ḥasan 'Izz al-Dīn Baḥr al-'Ulūm. He wrote the text as he perceived the jurisprudential ideas received orally from his professor, i.e. Ayatollah Shaikh Muṣṭafá al-Harnadī. This text, which was originally in a form of muḥāḍarāt (lectures) was formulated and edited by Sayed Bahr

ul-'Ulum, and is the first such serious attempt in elaborating the importance and impact of this topic from the Shi'ah demonstrative jurisprudence perspective. However, this book does not engage with this aforementioned issue, as this particular controversy (and ethical considerations) exists outside its scope.

The book's qualities are as follows: It is a jurisprudential text implementing Shi'ah demonstrative jurisprudence technical terms. It has discussed most of the relevant aspects of ART, and referred to the demonstrative arguments within Shi'ah jurisprudents circles. It has successfully highlighted the various opinions of Shi'ah scholars regarding this current topic in a demonstrative and technical manner. Despite the great emphasis on the Shi'ah standpoint on various jurisprudence issues, the text elaborates some of the theories of (*Rijali*) scholars and various opinions and principles of the reliability of the narrators of Hadiths. There are details in discussing the various Shi'ah scholars (*Rijali*) with regards to their principles in relying on different narrators that have led to the erroneous espousal of a theory claiming that some of the Shi'ah narrators are reliable and others are not. I feel that the author has succeeded in providing us with a modern document that can serve all Muslims as well as academics in diaspora. It would be of great help to have this piece published at this time, when all Muslims should struggle for a balanced Islamic modernity that can be adoptable by the majority of schools of thought in the Twenty First Century. I would like to congratulate the author for his

great effort in producing this demonstrative jurisprudence document, and to express my deepest gratitude to all those experts and friends who have encouraged me with this work for their sincere support in producing its English version.

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# Artificial Insemination

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## *Abstract*

In the following publication, our endeavour is to present detailed discussions of the demonstrative jurisprudence arguments with regards to IVF and all its potential options. The author is not going to delve into various theoretical and hypothetical cases, but will rather proceed to discuss the main practical wide spread options that should be analysed from a jurisprudential angle.

# Introduction

## *Forms of Artificial Insemination*

Linguistically, the word *insemination* has been used to denote a variety of meanings, one of which is the introduction of semen into the female genital tract. Insemination has two forms: natural and artificial. Natural insemination takes place, in normal circumstances, by way of the union of semen with a female ovum inside the cervix or uterus following sexual

intercourse, for the purpose of fertilization and reproduction[1] without the need for any additional actions or devices in order to activate the process. Thus, this form of insemination is known as natural insemination.

By virtue of the considerable progress in medicine these days, it has become possible to introduce semen into the female genital tract by non-natural methods, enabling those who cannot impregnate or reproduce naturally to have children through the use of various methods and tools. In view of that, artificial insemination can be defined as the union of semen and ovum by means of medical tools and techniques for the purpose of impregnation and reproduction without natural sexual intercourse.

There are two general categories of artificial insemination:

1) Perfect insemination, which involves the mixing, convention, and growth of the material that is formed from the male semen

[1] What is meant here by 'the purpose' is the intention by an intercourse planned by both parties, in order to have a child. Otherwise, the purpose is usually irrelevant; as demonstrated by unplanned pregnancy. It is obvious that the purpose of sexual intercourse can be pleasure, not necessarily - as the author categorically claims - fertilization and reproduction; indeed, the participants in intercourse may wish to avoid pregnancy, and yet pregnancy may transpire. Nonetheless, we have retained the original text, and only suggested this elaboration, having no wish to delete the phrase. (editor's remark)

and the female ovum in a nutrient medium outside the woman's body, followed by implantation of the fertilized egg into the woman's uterus; the child formed from such a process is often called a test-tube baby.

2) Imperfect insemination, which involves introducing the male semen inside the woman's cervix or uterus artificially, where the stages of the growth of the foetus, wholly or partially, take place within the woman's uterus.

In this book, the term "artificial insemination" is used to denote any of the methods of the non-natural insemination of the female for the purpose of impregnation. Any other method of causing or improving the likelihood of successful fertilization is out of the scope of the current study, because scholars of Islamic law unanimously agree on the legality of such methods as improving the semen or the ovum through the use of oral medications or other techniques that are undertaken outside the body such that insemination would take place in a more effective way. In fact, using such medications is not a matter of controversy among scholars of Islamic law, all of whom have plainly decided such ways of reinforcing semen and ovum are legal. The main core issue that these scholars are attempting to ascertain is whether insemination and fertilization through non-natural methods is acceptable in the Shari'ah Law of Islam.

There are also a number of modern clinical methods, including surgical operations and devices used both inside and outside the body, that enable women to improve the efficiency of their

uteruses or certain other organs of reproduction in order to reinforce their ability to have children; these, too, are not included as part of this study, because such operations have nothing to do with artificial insemination.

## *General Topics of the Study*

### *First Main Topic: The Religious Ruling of the Various Methods of Artificial Insemination*

Under this topic, we will discuss the religious law as it applies (legality or illegality) to various forms of artificial insemination. Within the major jurisprudential and legal researches that appertain to different aspects of this topic is that of placing the foetus resulting from insemination of a wife's ovum with her husband's sperm, either inside or outside her body, into the uterus of another woman, because of the wife's inability to preserve a foetus in her own uterus.

### *Second Main Topic: The Positive Law and Lawful Effects Resulting from Artificial Insemination*

Under this topic, we will discuss such issues as the laws appertaining to foetuses that are formed as a result of artificial insemination, apart from discussing whether the various methods of artificial insemination are legal or illegal. As a part of this discussion we will try to answer the following questions:

*By whom should such a foetus be avowed?*

*Who are its parents?*

*By whom should it be inherited legally?*

It is worth mentioning that the major part of this study will be concerned with the first main topic. During the course of the study, we will mention the laws relating to foetuses and children formed by way of artificial insemination, insofar as such discussion of these laws fits within the topic of the study.

## *General View of the Various Methods of Artificial Insemination*

The reasons for infertility, be it a husband's inability to impregnate or a wife's inability to carry a foetus to term, are various; therefore, different methods of artificial insemination may be adopted depending on the problems involved. Modern physical medicine has reached such a scientific pinnacle that it is able to solve nearly any problem of infertility in male and female subjects. Thus, since so many methods of artificial insemination have appeared, it is imperative to find jurisprudential and legal answers to the questions that are posed in this field.

While there are various aspects and factors, artificial insemination can be generally divided into two major categories:

(1) Insemination with the husband's semen.

(2) Insemination with an unrelated (usually anonymous) man's semen.

Furthermore, as far as jurisprudence and law are concerned, artificial insemination can be divided into two major parts:

(1) Insemination involving the parties to a legal marriage without the introduction of an unrelated man's semen; this part is subdivided into various methods and forms.

(2) Insemination involving parties who are not related through marriage; that is, the insertion of a man's semen into the genital tract of a woman who is not his legal wife; this part can be subdivided into intentional and unintentional insemination.

It goes without saying that one set of divisions and subdivisions appears when the reasons for infertility and inability of sexual reproduction are centred on the male, and another set when the female is where one finds the problems, such as the inability to produce ova, to conceive, and so on.

The combination of all of these divisions, taking into consideration the various factors of infertility and the inability of impregnation for men and women, leaves a huge variety of states and probabilities, the most important of which are as follows:

***First category: Injection of the husband's semen into the genital tract of the wife:***

1.1. Introducing the husband's semen into the wife's genital tract and keeping the foetus viable in her uterus up to childbirth.

1.2. Introducing the wife's ovum, fertilized by the husband's semen, into another woman's uterus and transferring the foetus at a later stage into the wife's uterus.

1.3. Introducing the wife's ovum, fertilized by the husband's semen, into the uterus of another woman and keeping the foetus in her uterus up to childbirth.

1.4. Performing the process of insemination outside the female genital tract and then transferring the foetus to the uterus of the wife of the owner of the semen.

1.5. Performing the process of insemination outside the female genital tract and then transferring the foetus to the uterus of a woman other than the wife of the owner of the semen.

1.6. Performing the process of insemination outside the uterus and nurturing the foetus through laboratory means, outside of any uterus, up to final growth.

***Second category: Fertilizing the ovum of a husband's second wife with his semen and placing the fertilized combination into the uterus of his first wife, who has no ova.***

***Third category: Fertilizing the ovum of a woman other than a man's wife with his semen, in the case that his wife's uterus lacks the ability to ovulate, rendering her unable to conceive a child.***

3.1. Fertilizing, with the husband's semen, the ovum of another woman inside the genital tract of the husband's wife.

3.2. Fertilizing the ovum of another woman inside that woman's genital tract with the husband's semen; this probability is divided into two cases:

3.2.1. The foetus is kept in the uterus of a marriage-unrelated woman (*ajnabiyyah*)[1] up to the time of childbirth.

3.2.2. The foetus is transferred to the uterus of the wife of the owner of the semen.

3.3. Performing the insemination outside the genital tract. This probability is also divided into three cases:

3.3.1. The foetus grows inside the uterus of the husband's wife.

3.3.2. The foetus grows inside the uterus of the marriage-unrelated woman.

3.3.3. The foetus grows totally outside a uterus.

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1 Throughout the book, the expression: *marriage-unrelated woman* will be used to denote the woman who does not have any marital relationship with the sperm donor.

***Fourth category: Performing fertilization of the ovum of a married woman, - who is married to an infertile husband, - by a man's semen, with whom she has no marital relationship (i.e., non-marital insemination).***

4.1. Fertilization of the ovum of an infertile husband's wife (*marriage-unrelated woman*) with the semen of a man other than her husband.[1]

In this case, there are two probabilities:

4.1.1. The semen's donor is known.

4.1.2. The semen's donor is unknown.

4.2. The owner of the ovum fertilized by a man's semen is not married to anyone.

4.2.1. The owner of the semen is the husband not of the owner of the ovum, but of another woman, and his wife is unable to give birth to children.

4.2.2. Neither the owner of the semen nor the owner of the ovum is married.

4.2.2.1. Both the owner of the semen and the owner of the ovum are known.

[1] To clarify, there are two men and a married woman. There is a couple, but the husband is infertile, and due to his infertility, the wife receives sperms from an unrelated donor.

4.2.2.2. Either the owner of the semen or the owner of the ovum is known.

4.2.2.3. Both the owner of the semen and the owner of the ovum are unknown.

***Fifth category: Uncommon Cases***

5.1. Fertilizing the ovum of a female human being with the semen of a male animal.

5.2. Fertilizing the ovum of a female animal with the semen of a male human being.

5.3. Fertilizing the ovum of a female human being with semen extracted from a plant… etc. [1]

Of course, the above list does not take account of all cases and probabilities, since each one of these major topics may contain more cases and probabilities than what has been mentioned. For

[1] It is obvious and widely confirmed by biological research that only animals have semen and ova; plants do not. It is also widely accepted that it would be impossible for fertilization to occur between human and animal species, the proof being that there is a mismatch in the DNA; barring perhaps the possibility that some future technology could rearrange the DNA of other species to match with human DNA. Somebody, therefore, may question as to why this option was mentioned by the author. I believe that despite the fact that option "5" is impossible and moot, the list in "5" options seems to be purely for research and scientific distinction for the purpose of further investigation and profound analysis. (Editor's remark)

instance, in the aforementioned topic No. 1 (cases of both the owner of the semen and the owner of the ovum are legitimately married spouses), we have just supposed that the husband is alive when the process of artificial insemination is undertaken, although the following question could be posed: What would be the ruling regarding the injection of the semen of a dead husband into the genital tract of his widow during her waiting period (i.e., '*iddah*: the specified period of time that must elapse before a widow or divorcee may legitimately remarry)?

If the semen of a husband was taken from him during his lifetime and deposited in a sperm bank (a place where seminal fluid is kept) and kept there under conditions that maintain its viability, and, after his death, this semen is injected into his widow's genital tract during her waiting period, then this question must be discussed under a field of Muslim jurisprudence other than that of artificial insemination. The latter field is concerned with answering the following question: Are matrimonial laws automatically abrogated upon the death of the husband, or are they maintained as long as the widow is still in the waiting period?

To return to the main topic, the list above comprises the most important and common cases of present-day artificial insemination. Various uncommon probabilities appertained to this subject were not mentioned in the list, although they may be posed if only in scientific research, since they are neither familiar nor frequent occurrences.

In this book, our main interest is focused on the jurisprudential field's regard of the most important common cases of artificial insemination.[1] We will also highlight the basic and pivotal cases from which similar examples and probabilities are derived.

# First Central Point

# Jurisprudential Questions Appertained to Artificial Insemination

***An Argumentative Survey of the Various Forms of Artificial Insemination***

## Chapter One

## The Preliminary Practical Fundamentals of Artificial Insemination as a Field of Research

As has been previously mentioned, artificial insemination is one of the novel subjects that did not exist in the age of direct

[1] The author does, of course, in his #5 above, list some "uncommon" probabilities. Those cases although logically or philosophically possible are practically impossible. Therefore, this statement is about discouraging the practice of extensively discussing such cases. (Editor)

legislation, and which was not discussed by the early Muslim jurisprudents. Hence, when investigating the rules appertaining to each division of the topic of artificial insemination, it is probable that we will not be able to isolate a decisive religious law governing these issues, even though we will certainly depend on proofs of Muslim jurisprudence, whether by way of certainty or way of legally considered conjecture. Therefore, although our deductions will to some extent be subject to challenge, we will resort to the practical fundamentals and principles of deducing religious laws regarding secondary issues from the sources of Islamic legislation, assuming these fundamentals as a foundation and a criterion on which such laws can be deduced.

In order to derive the practical foundation and to learn the most accurate method of making use of it, we first of all have to investigate the principles of jurisprudence, as an independent branch of knowledge, and the topics of practical fundamentals of Muslim jurisprudence. Since the Holy Legislator has laid considerable emphasis on the importance of matrimonial ties and the preservation of chastity and because the main topic of this book, legal questions related to artificial insemination, is firmly connected with reproduction, marriage, and the preservation of chastity, it seems proper, before entering upon any jurisprudential study, to shed enough light on the basis upon which we will depend in the ensuing discussions; and the viewpoint that we will adopt with regard to the preliminary foundation of all of such discussions. It also seems proper to

discuss this introductory point in an independent chapter of this book so that it will serve as a presentation to the subsequent discussions and as a key to solving many of the coming issues that will be discussed throughout the book.

Generally speaking, there are two views with regard to the practical foundation of the issues of reproduction and preservation of chastity:

## *First View: Presumption of Precaution*

According to this view, the Holy Legislator has imparted special importance to the issue of marital ties and preservation of chastity (jurisprudentially expressed as *issues of private parts*) as well as the issue of family relationships; therefore, the Holy Legislator must have ordered us to take as much precaution as possible in dealing with such issues, so that we will avoid any questions of kinship, which could lead to the collapse of the family and larger social structure.

According to this view, the preliminary foundation on which we must depend whenever we have doubts in any issue related to matrimonial and family ties is the principle of presumption of precaution (*aṣālat al-iḥtiyāṭ*), which means that we must exercise extreme precaution with regard to such issues. Accordingly, it is obligatory to exercise precaution in issuing a religious law with regard to a doubted question belonging to

these issues and it is thus obligatory to prevent the issuance of any verdict allowing engagement in any dubious cases.

## *Second View: Presumption of Initial Legality of All Things*

According to this view, the original rule concerning all things whose legality is challenged in all of fields of jurisprudence, including the laws related to matrimonial ties, states that they are initially legal whether they belong to reason-based or to religious law-based issues. In the terminology of Muslim jurisprudence, this principle or rule is known as *aṣālat al-barā'ah*.[1] In this view, we must deem legal any form of artificial insemination whose legality is questioned. For instance, if the artificial introduction of semen into the genital tract of a marriage-unrelated woman is not deemed a sort of adultery (which is unquestionably forbidden), and if the illegality of such an action is challenged, and if we cannot find any proof that this action is illegal, then we must decide it as legal. By applying this general rule, the matter at issue will involve a wider range of cases: placing a brother's semen into his sister's genital tract through a means other than natural insemination, for instance, might well be deemed legal, because

1 *Barā'ah* (or *aṣālat al-barā'ah*) means that, when it is not known whether a question is legal or illegal, it must be decided as legal because the origin of all things is their being legal.

the rule of the initial legality of all actions would undoubtedly embrace such cases.

In order to reach the most acceptable ruling, we will discuss the proofs of the two opinions and touch on all the objections that are raised against them. Only then, may we arrive at a final conclusion.

## *Proofs of the First Opinion (Presumption of Precaution)*

Those who adopt this opinion, which is founded on the necessity of applying the presumption of precaution to the issues related to marriage and chastity, provide two basic proofs, which are as follows:

### *First Proof: The Common Attitude of the Religious Law to the Question of Marriage*

On the word of some scholars of Muslim jurisprudence, the attitude that is common to the religious laws of the questions of marriage, reproduction, dubious copulation, and other related issues is that these questions must always be treated with extreme precaution; therefore, it is obligatory to presume precaution when dealing with these questions, especially when a challenge is raised, and it is also obligatory to issue laws according to the rule of initial precaution.

## *Objections*

This proof has to face three points of argumentation:

***First Objection***: It is not known for sure that the common attitude of religious law to these questions is based on precaution or that precaution must be applied to them. In other words, scholars of Muslim jurisprudence have had different views in this regard, and their words have not held clear-cut indications of the obligation or preponderance of applying precaution to such issues. Consequently, because the common attitude of religious law to these questions is general, this must be sufficient refutation of the claim.

***Second Objection***: The majority of views of scholars in this regard apparently indicates that it is preferable, but not obligatory, to apply precaution to these questions. Of course, precaution is preferable in all religious questions without exception, although it may be more emphatic in questions of reproduction, bloodshed, marriage, and family affairs. In conclusion, no scholar has openly stated that it is obligatory to apply precaution in such issues.

One of the important issues that has not been investigated independently; rather, it has been referred to within separate issues of jurisprudence, is the following one:

I*s it obligatory and binding to apply precaution to questions appertained to marriage, chastity, blood, and personal properties?*

This question can be formed in another way, as follows:

*Is it acceptable to apply the general rule of the reason-based and tradition-based legality of all things to all cases that involve suspicion in the ruling of a case or in its applicable instances? Alternatively, does this general rule of initial legality in such cases automatically turn into the general rule of initial precaution, as if the general rule of initial legality of all things becomes exclusive due to a scholarly consensus or a certain tradition? Or does the application of precaution to such issues become more emphatic and more forceful than other issues, but is still not decided as obligatory (*wājib*) or binding (*lāzim*) although it may be decided as required (*maṭlūb*) and recommended (*mustaḥabb*)?*

To understand this topic properly, let us investigate the statements of the master scholars of jurisprudence and the traditions that have been reported from the Holy Imams in this regard:

A) Some scholars have openly deemed it obligatory to observe precaution in issues associated with the private parts:

Al-Fāḍil al-Ābī says in *Kashf al-Rumūz* 2/173:

> "The method of precaution necessitates that none should fall upon the legality of private parts before certainty is reached."

ʿAllāmah al-Ḥillī says in *Tadhkirat al-Fuqahā'*, pp. 597:

> "In the issues appertained to the private parts, it is obligatory to practice precaution."

Fakhr al-Muḥaqqiqīn says in *Īḍāḥ al-Fawā'id* 3/165:

> "The legalization of private parts is founded on precaution."

Al-Muḥaqqiq al-Thānī says in *Jāmi' al-Maqāṣid* 1/326:

> "The laws of private parts are founded on methodical precaution." [1]
>
> "Precaution in its most strict form must be applied to the issues of private parts."[2]
>
> "The laws of private parts are founded on perfect precaution."[3]
>
> "Matrimonial issues are subjected to precaution in the sight of the Holy Legislator, because the Legislators are reported to have paid the utmost attention to the practice of precaution in the issues of private parts."[4]

Al-Muḥaqqiq al-Thānī says in *al-Rasā'il* 1/219:

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1 *Jāmi' al-Maqāṣid* 1/326.

2 *Ibid.,* 4/303.

3 *Ibid.,* 6/128.

4 *Ibid.,* 13/12.

> "Issues of the private parts must be founded on perfect precaution."

Al-Shahīd al-Thānī says in *al-Rawḍah al-Bahiyyah* 5/335:

> "Precaution must be observed in the questions of private parts, since the laws of such issues are founded on precaution."

Al-Fāḍil al-Hindī says in *Kashf al-Lithām* 7/116:

> "Precaution in the questions of private parts is obligatory."

In another part of the same book (8/130), he says,

> "However, precaution in the questions of private parts is required."

Al-Muḥaddith al-Baḥrānī says in *al-Ḥadā'iq al-Nāḍirah* 2/326,

> "It is obligatory to observe precaution in the questions of private parts, because the validation of the private parts is a contingent matter; that is, it must be conditional upon clear-cut texts, without which it is invalid according to the jurisprudential rule of the initial illegality of intruding in the issues of private parts. Moreover, it is not acceptable enough to overstep this rule when the forbiddance or illegality of intruding in the private parts is uncertain, because this question is dependent upon total precaution."

Sayyid Muḥammad Jawād al-'Āmilī says in *Miftāḥ al-Karāmah* 7/331,

> "It is obligatory to observe precaution in the questions of private parts."

In *Riyāḍ al-Masā'il* 11/17, Sayyid ʿAlī al-Ṭabāṭabā'ī says,

> "Precaution in questions of private parts must be observed."

Shaykh al-Anṣārī says in *Kitāb al-Nikāḥ* pp. 78,

> "It is thus obligatory to deal with the questions of private parts as restrictedly as possible, because these issues are based on precaution, as is decided by both reason and traditions."

In the same book (pp. 250), he says,

> "It is obligatory to deal with the issues of private parts as restrictedly as possible, because these issues are based on precaution, as is familiarly known."

Sayyid Muḥsin al-Ḥakīm says in *Mustamsak al-ʿUrwah al-Wuthqā* 14/223,

> "It is notably known that precaution must be observed with regard to the questions of private parts."

Al-Muḥaqqiq al-Bajnavardī says in *al-Qawāʿid al-Fiqhiyyah* 3/36,

> "… For this reason, the Legislator has deemed it obligatory to observe precaution in the initially spurious issues of private parts in the same way as He has deemed it

> obligatory to observe precaution in questions of bloodshed, because these two matters are paid a great deal of attention by the Legislator."

On another page of the same book (4/337), he adds,

> "The origin of all laws according to their initial nature is the legality (of all things) unless this has been restricted to precaution consensually in the applicable spurious issues appertaining to the private parts, while the issues of applicable spurious matters are subjected to the original law of these issues unexceptionally."

The following sentence is quoted from the book of *Dalīl al-ʿUrwah al-Wuthqā* (1/203):

> "It may be said, as is reported from al-Muḥaqqiq al-Nā'īnī, that the original law of the legality of all things is not applicable to issues of possessions and properties; rather, it is obligatory in such cases to observe precaution, just as it is obligatory to observe it in issues appertained to bloodshed and private parts. Explaining this idea more clearly, he cites as justification the famous jurisprudential rule, which entails that every flexible law whose implementation is contingent upon an externally existing matter must not be carried out when that external matter does not exist in reality."

Al-Muḥaqqiq al-Khūnsārī, in his book of *Jāmiʿ al-Madārik* (3/123), says,

> "…This is because it is binding to observe precaution in issues related to the private parts…"

B) Some other scholars argue that the observance of precaution in issues of private parts must be applied in a manner of superiority and priority.

Al-Shahīd al-Awwal, in *Ghāyat al-Marām* (3/41), says,

> "In fact, observance of precaution in questions of private parts has priority (over other manners)."

Al-Muḥaqqiq al-Thānī, in *Jāmi' al-Maqāṣid* (12/340), has mentioned an opinion that is different from a previous one, which has been quoted from him earlier in this book. He thus says,

> "…Because observance of precaution in questions of private parts is required…" Of course, the word *required* can be understood to mean *obligatory*.

Al-Shahīd al-Thānī, in *Rawḍ al-Jinān* (1/208), says,

> "It is necessary to observe precaution when matters are confused so as to maintain the inviolability of private parts and lineages."

The same author, in *Masālik al-Afhām* (7/403), says,

> "It is known that observance of precaution in issues of private parts is prior (to all other options)."

Of course, on other pages of the same book, the author has mentioned some statements, all of which can be seen to refer to the obligation of observing precaution in questions of private parts. So, in volume 9, page 288, of the same book, he says,

> "The issues appertained to private parts must be treated on the basis of precaution."

In his book entitled *Majma' al-Fā'idah wa'l-Bayān* (1/144), al-Muḥaqqiq al-Ardabīlī says,

> "Observance of precaution in issues of private parts has been made required by the Legislator, as is famously known."

Al-Muḥaddith al-Baḥrānī, in *al-Ḥadā'iq al-Nāḍirah* (24/63), says,

> "It is known that observance of precaution in issues of private parts is prior (to all other options)."

In the same book (24/156), he says,

> "Observation of precaution, especially in issues appertained to private parts, is required."

Al-Muḥaqqiq al-Narāqī, in *al-Rasā'il wa'l-Masā'il* (2/115), says,

> "However, observance of precaution in laws and choosing what is the closest to salvation (from violating the divine

laws) in the lawful and unlawful issues, mainly in the laws concerning private parts, are required by the Legislator."

Al-Muḥaqqiq al-Najafī, in *Jawāhir al-Kalām* (22/277), says,

"…This matter is dealt with under the issues of private parts and lineages, which are required to be dealt with according to precaution…

… especially in the issues of private parts, which we are ordered to be managed with observance of serious precaution … (24/207)

… especially in the issues of private parts, which is required to be managed with observance of serious precaution… (29/135)

… About such matters, many narrations confirm that they must be managed with precaution, especially in matter of private parts… (29/278)

… and the rule of precaution in issues appertained to private parts, which must not be observed initially… (30/178)

… You have already come to know about the significance of giving priority to precaution in matters of the private parts… However, it is known that observance of precaution in issues of private parts must not be neglected… (30/300)"

Shaykh al-Anṣārī, in *al-Makāsib* (3/357), says,

> "What is left undiscussed in the question of the reason for the Imam's confirmation of observing precaution in the issues of the private parts is the law that such precaution must be kept active in these issues and must not be aborted. This is because these issues identify the kinship (i.e. fatherhood and motherhood) of a child and, what's more, questions about the private parts, just like questions of properties, do not exceed one of the two risks, while all other issues that lie between these two extremes are not subjected to precaution."

Baḥr al-ʿUlūm, in *Bulghat al-Faqīh* (2/209), says,

> "… along with the points of evidence that have indicated the confirmation of precaution in issues of private parts…
>
> … It is prior to observe more precaution in issues of private parts than any other issue. (3/271)

Al-Muḥaqqiq al-Dāmād says in *Kitāb al-Ṣalāt* (2/61),

> "Therefore, it is inevitable to turn to the general proofs that establish the legality of all things when the private indications are proven to be imperfect, because it is binding to observe precaution in issues of private parts, personal statuses and the like issues."

From the words of al-Muḥaqqiq,[1] we can conclude that it is highly recommended to observe precaution in questions

[1] Such as his words mentioned in his encyclopaedic book, *Tafṣīl al-Sharīʿah fi Sharḥ Taḥrīr al-Wasīlah* (written by Imām al-

appertained to private parts. Let us now present some of these words:

> "Probably, the reason for this issue is the high recommendation of observing precaution in issues of private parts… Thus, the reason for this is that precaution in issues of private parts must be greatly observed…"

The previous quotation shows clearly that the topic of the obligation and requirement of observing precaution in the issues of private parts and matrimony is not a matter of unanimity among scholars, nor can it be ascribed to the well-known (*mashhūr*) issues (i.e., issues whose laws are famously known and more or less unanimously agreed upon by all scholars). In fact, just as some scholars have spoken of precaution to be obligatory, others have spoken of it to be more prior (to other options) or confirmed (but not obligatory).

On the basis of this supposition and apart from the implication of the traditions that will be discussed later on in this book, it is unacceptable, in fields of jurisprudence regarding marital issues, to claim transformation of the initial legality (of all things) into initial precaution; rather, we must accept precaution as having priority over all other options, just as it does in other fields than those under discussion; i.e., issues of private parts

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Khumeinī); the Book of *al-Ijtihād wa'l-Taqlīd*, pp. 200, the Book of *al-Ṭalāq wa'l-Mawārīth* (Laws of Divorce and Inheritance), pp. 190, and the Book of *al-Nikāḥ* (Laws of Matrimony), pp. 61, and his book of *al-Qawā'id al-Fiqhiyyah*, pp. 481.

and matrimony. Yet observance of precaution in such issues ought to be confirmed and highly recommended.

Let us now provide points of evidence to prove the authenticity of our claim:

1) Verdicts of master scholars of jurisprudence read that, when a man sets out to marry a woman, it is not obligatory upon him to ask her whether she is single or attached. Accordingly, if observance of precaution is compulsory in issues of marriage, such verdict will be contradictory to that rule (of the obligation of observing such precaution).

2) Master scholars of jurisprudence have unanimously deemed valid matrimonial contracts concluded by an unauthorized deputy (i.e., the principal has not authorized that person to represent him or her in his or her matrimonial issues, or has dismissed him from this office before the conclusion of the marriage contract). Again, if observance of precaution in matrimonial issues is compulsory, such contracts concluded by unauthorized persons would have to be considered invalid.

Having realized this incongruity and trying to justify it, the author of *Bulghat al-Faqīh* says,

> "Restriction and broadening of the fields of certain issues have nothing to do with observation or non-observation of precaution in these issues. For instance, broadening and lenience in matrimonial issues are not contradictory to the observance of precaution that has been tensely confirmed

> in such issues; rather, it might be more appropriate to increase the cases of the legality of marriage as much as possible in order to do away with and to avoid adultery and illegal relationships."[1]

In fact, the author applies precaution in matrimony to instances a part or a term of which is questioned, and to other instances where it is questioned whether a woman is or is not engaged in a matrimonial contract. On the other hand, the author does not apply precaution in matrimonial issues to instances where the cause and motive for marriage are known, but it is questioned whether the parts or terms of that motive are many or few.

In fact, this justification is noticeably unacceptable and problematical, because there is no difference between the two kinds of instances with regard to laws. Thus, if it is obligatory to observe precaution in matrimonial issues, then there must not be any difference between the various instances of matrimony. Therefore, there is no difference between doubting the origin of the causation of a certain motive for marriage and doubting the peculiarity of one of the terms of its validity.

However, in some other issues like those appertaining to bloodshed, such as retaliation for murder and execution of the religious penal laws (*ḥudūd*), the matter is contingent upon the materialization of certain factual details. Hence, unless these details are proven to be on-going, it is not acceptable to decide

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1 Muḥammad Baḥr al-'Ulūm, *Bulghat al-Faqīh* 2/211.

death sentence or retaliation. On the contrary, in issues of marriage and the private parts, such a peculiarity does not exist, and none of the master scholars of jurisprudence has decided that a man, before marrying a woman, must make sure that she is not his foster or lineal sister; rather, all scholars say that it is enough for a man to have an amount of ignorance that the woman he intends to marry is his foster or lineal sister.

***Third Objection***: Some claim that the common religious taste of the ruling entails that observation of precaution in such matrimonial issues as the three above is predominant or even compulsory. This claim should be based on a set of religious texts and traditions; the claim alone cannot be taken as an independent proof. On the other hand, if we agree decisively to this common religious taste of the ruling, we may be able to consider it to have been based on a religious law, just as we are sure that the religious taste of the ruling is based on the grounds that every person is answerable to any decision or judgment that he or she issues.

## *Second Proof: Narrations Involving this Issue*

Some scholars who decide the obligation of observing precaution in issues of the private parts have provided as evidence a number of narrations that command us to hold on to precaution in all questionable or uncertain issues of marital ties. In discussing the purports of such traditions, these scholars have deemed it obligatory to observe precaution in the issues of marital ties whose rulings might be questionable. This

argumentation has been founded on the claim that the Holy Legislator made obligatory the observation of precaution in issues of private parts in a mandatory obligation (*wujūb mawlawī*; an obligation the commitment to which brings about reward and the violation of which brings about punishment) but not discretionary, although we have our own proofs to claim that the indications of these traditions cannot exceed discretionary obligation.

At any rate, let us mention each of these narrations and discuss their apparent features so as to discover whether the obligation mentioned there is mandatory or discretionary.

***First Narration: Shu`ayb al-Ḥaddād's Passably Reported Narration***

Al-Ḥusayn ibn Saʿīd has reported on the authority of al-Naḍr ibn Suwayd on the authority of Muḥammad ibn Abī-Ḥamzah who reported Shuʿayb al-Ḥaddād to have said: I once said to Abū-'Abdullāh (Imam al-Ṣādiq), "A man from among your devotees sends his regards to you; he had the intention to marry a woman whom he liked for certain features and she agreed to marry him, but he hesitated before going through the procedures of betrothal because this woman had an ex-husband who had divorced her in a way incompatible with the legal method of divorcement; so the man is asking you to guide him what to do, and he is ready to carry out whatever order you may make."

Answering him, Imam al-Ṣādiq said,

> "This is an affair of the private parts. In fact, any affair that is related to the private parts is so complicated, because it is the cause of the production of children. We observe precaution in such issues. So the man must not marry that woman."[1]

## *Simplified Explanation of the Argumentation*

Commenting on this narration, those who provide it as their evidence (on the obligation of observing precaution in issues of private parts) say, "From the Imam's words: "*This is an affair of the private parts. In fact, any affair that is related to private parts is so complicated, because it is the cause of the production of children. We observe precaution in such issues. So, the man must not marry that woman,"* we reasonably conclude that the *precaution* mentioned is a legal and binding obligation; therefore, it is binding and obligatory to observe precaution in all issues that are related to this topic (i.e., private parts), including the one of its issues under discussion; i.e., artificial insemination.

## *Discussion of the Argumentation*

In my hypothesis, the foundation of this conclusion cannot be found in this narration. To prove this theory, we can cite three points:

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1 Al-Ḥurr al-'Āmilī, *Wasā'il al-Shī'ah* 20/258.

***First Point***: According to the narration involved, the man who asks Imam al-Ṣādiq for advice does not overtly declare that he has no idea as to whether it is or it is not legal for him to marry the woman; rather, the narration apparently shows that the asker was one of the devotees of Imam al-Ṣādiq and that he had familiarity with the legality of marrying that woman, but he had some apprehension or nervousness about the matter; he therefore asked for Imam al-Ṣādiq's opinion about the matter of marrying that woman so that he could be completely certain of the Imam's satisfaction. Because the asker was fond of Imam al-Ṣādiq, he made the matter of marrying the woman conditional on the Imam's instruction. In fact, those who ask master jurisprudents about the religious decisions of certain issues may sometimes want to know the rulings of these issues but at other times they only want to be advised by these master scholars. With regard to the issue mentioned in the narration, according to the general jurisprudential rule of *ilzām* (i.e. commitment), the Imāmiyyah Shīʿah scholars legalize the divorce of a woman that is pronounced and carried out according to the laws decided by a non-Shīʿah school of law. Hence, when the divorce waiting-period (*ʿiddah*) of this woman terminates, it becomes legal to marry her.

In brief, the narration apparently shows that the asker had already known that there was no legal problem in marrying the woman, but, because he was devoutly attached to Imam al-Ṣādiq, he wanted to obtain his advice and guidance in this regard. So, the Imam, advising him, said, "*This is an affair of*

*the private parts. In fact, any affair that is related to the private parts is so complicated, because it is the cause of the production of children. We observe precaution in such issues. So, the man must not marry that woman*."

***Second Point***: The Imam's answer to the man's request with the words: "*any affair that is related to the private parts is so complicated*" is another point of evidence proving that the ruling of precaution in this issue is discretionary, not mandatory, because the Imam followed up his words with a justification that is not related to a divine command; rather, it is an object of all rational people's attention. This proves that the Imam's words were not an elucidation of a divine command. Proving this fact, too, the Imam then said, "*We observe precaution in such issues,*" which means that we must observe precaution whenever we want to discuss such a matter. It is also noticeable that the Imam did not openly state that the man should observe precaution in such issues; rather, the Imam attributed precaution to himself only, saying, "*We observe precaution*." This sentence of the Imam is a very clear indication of the fact that the Imam's advice of observing precaution was not a divine command; rather, it was a discretionary and instructive recommendation; otherwise, the Imam could have ordered the man openly to observe precaution and could have warned him against marrying such women.

***Third Point***: Not even a single master scholar of jurisprudence, depending upon this narration, has issued any verdict prohibiting marriage to a woman who was divorced according

to the divorce laws of another school of law. Moreover, even if this ruling cannot be inferred from the narration, there is no contradiction or opposition noticed between this one and the other narrations that establish the general rule of commitment. This point thus carries a very clear proof that the "*must"* mentioned in this narration implies an instructive but not mandatory obligation; therefore, there is no evidence in the narration on the obligation of avoiding marrying such women.

## *Ambiguous Points*

However, at this juncture, there are two ambiguous points that need to be unravelled:

***First ambiguous point***: It may be said that precaution is without sense for the Holy Imams, because only ordinary individuals who are not acquainted with the reality of a ruling need to act upon precaution, while the Holy Imams are too knowledgeable to ignore any affair, since they never face any spurious or unspecified point.

To solve this ambiguity, we state that the issue involved is not among the kind of issues that may be confusing, unspecified, or ignored; therefore, we cannot say that the all-comprehensive knowledge of the Holy Imams is not incompatible with precaution. As we have mentioned earlier, the issue under discussion is completely obvious with regard to its subject matter, and it entails no ambiguity in relation to its outward focus. In addition, with regard to the religious ruling of the

issue, there is no ambiguity or problem for the Imam and even for the reporter of the narration. To explain, when the Imam says, "*We must observe precaution*," this does not mean that the Imam recommends observing precaution in the question because its ruling is unknown for him; rather, precaution in this regard stands for preference, priority, and predominance of not marrying that woman over all other choices. Of course, this point provides clear evidence that the precaution recommended by the Imam is more instructive than mandatory.

***Second ambiguous point***: It may be said that the reason that the Imam refrained from stating openly that marriage with such a woman must be avoided and, instead, he only advised *precaution* in lieu of expressing such a prohibition was that he could not declare the actual ruling (illegality of such marriage) because he tended to use *taqiyyah* (pious dissimulation) whenever a question that is contradictory to the sect of the ruling authorities is posed before him.[1]

To solve this ambiguity, the narration does not carry any indication of *taqiyyah*, because the Imam answered the supplicant with a question counter to the law decided by the Sunnis in this issue, saying, "*This is an affair of the private parts. In fact, any affair that is related to the private parts is so complicated, because it is the cause of the production of*

1 This point may be an answer to the first ambiguous argument about the Imam's all-inclusive knowledge, which is contrary to his observation of precaution.

*children. We observe precaution in such issues. So, the man must not marry that woman."* Of course, this verdict is at variance with *taqiyyah*. If the Imam's answer had been based on *taqiyyah*, he would have necessarily said that this divorce is valid and it is legal to marry that woman.

Based on this interpretation and the points of evidence that have been given, along with the two ambiguous points and the answers to them, we conclude that the precaution mentioned by the Imam was an instructive obligation, but not mandatory.

***Second Narration: Al-ʿAlā' ibn Sayyābah's authentic narration***

Al-ʿAlā' ibn Sayyābah is reported to have said: I once asked Abū-ʿAbdullāh (al-Ṣādiq) about the verdict of the issue of a woman who had deputized a man for the matter of giving her in marriage to another man. The man accepted that authorization and she asked others to testify to the man's consent. The deputy then gave her in marriage to another, but the woman denied that she had appointed that man as her deputy and claimed that she had already dismissed him from agency and brought two witnesses who testified to her claim.

Imam al-Ṣādiq (ʿa) asked al-ʿAlā', "What is the opinion of the others (i.e. the non-Shīʿah jurisprudents) about this issue?"

Al-ʿAlā' answered, "They state that this issue must be investigated; if the principal (i.e., the woman) had dismissed the

deputy before he concluded that marital contract on behalf of her, then his agency must be decided as void; but if she did so after that, then that marriage is legally binding according to the conditions agreed upon by the deputy and the conditions of the agency she had given to him unless the deputy had violated any of her conditions that she stipulated in her authorization contract with him."

The Imam said surprisingly, "How come that they decide to dismiss the deputy from doing a locum for her while she had not informed him of the decision of his dismissal?"

Al-ʿAlā' answered, "They do. They claim that, if she had appointed a man as her deputy and then declared publicly that she dismisses him from acting on her behalf, making others witness for her, then this deputyship is decided as void even if the deputy does not know about his dismissal. Then, whatever acts and contracts the deputy had concluded on her behalf with regard to marital issues in specific will be decided as void. Yet his acts and contracts that he had concluded on her behalf with regard to other issues than marriage are not decided as void unless the deputy has already known about his dismissal. Justifying this ruling, they say that finance can be compensated, but private parts cannot be compensated, especially when a child is formed or born."

Expressing astonishment, Imam al-Ṣādiq said,

"Glory be to Allah! How strange this is and how unfair and corrupt this judgment is! Marriage is more important, and with yet stronger reason, it must be handled with precaution—more than any other question, because marriage is a matter of chastity and the source of (giving birth to) children.

One day, a woman came to (Imam) ʿAlī and asked him to help her against her brother, saying, 'O Commander of the Faithful, I had authorized my brother to give me in marriage to a man, but I immediately dismissed him from this authorization and declared this decision before some witnesses. Not knowing of my dismissal of him, he went and gave me in marriage to another man. Now, I have evidence that I had dismissed him from acting on my behalf before he gave me in marriage to that man.' The woman then provided her evidence.

The woman's brother said, "O Commander of the Faithful, she appointed me as her deputy but she did not inform me that she had dismissed me; therefore, I gave her in marriage to a man according to that authorization.'

Judging in this issue, Imam ʿAlī asked the woman, 'What is your answer (to your brother's claim)?'

The woman said, 'No, I did inform him about dismissing him from authorization.'

When the Imam asked for evidence, she said, 'These people testify to my claim.'

When the Imam asked them, they said, 'We bear witness that this woman asked us to bear witness that she had dismissed her brother so-and-so from acting as her deputy in the matter of giving her in marriage to so-and-so, and that she is now free to do whatever she wants with regard to the question of her marriage. That took place before her brother gave her in marriage to that man.'

Imam ʿAlī asked the witnesses, 'Did she do that in the presence of her brother and in his hearing?'

'No,' they answered.

The Imam further asked them, 'Do you witness that she informed him that she had stripped him of authority in the same way as she did when she invested him with it?'

'No,' they answered.

The Imam decided, 'I see that the authorization is valid and the marriage is legally binding, too.'

He then asked about the husband and said to him, 'Take her. May Allah bless you in her.'

The woman said, 'O Commander of the Faithful, put him on oath that I did not inform him about my cancellation of the authorization and that he did not have any idea about it before he concluded that marriage contract.'

The Imam thus asked the man, 'Do you take an oath on that?'

'Yes, I do,' said the man and took an oath.

So, the Imam decided the authorization as binding and the marriage as legal and valid.'"[1]

## *Simplified Explanation of the Argumentation*

Those who cite this narration as their evidence on the obligation of observing precaution in marital issues state that the narration indicates the necessity of precaution in the issues related to marriage and private parts. The original point that refers to this matter in the narration is the Imam's words: "*Marriage is more important, and with yet stronger reason, it must be handled with precaution*." The Imam then adds, "*Marriage is a matter of chastity and the source of (giving birth to) children*." What is meant by these words is that the difference between financial issues and marital issues is that in the earlier, there is a property that can be sold; and if we suppose that the sale contract is invalid, the problem will be restricted to the seller or the buyer alone. Yet, in issues of marriage where there is a child involved in the question, it becomes binding to observe the issue with more precaution. Hence, it may be inferred from the Imam's words that precaution in such issues is mandatorily obligatory; and because the actual religious ruling of such issues like artificial insemination has not been reached or assumed from acceptable and decisive proofs, it becomes obligatory to observe precaution in them.

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1 Shaykh al-Ṭūsī, *Tahdhīb al-Aḥkām* 6/214, H. (*ḥadīth no.*) 5; al-Ḥurr al-'Āmilī, *Wasā'il al-Shī'ah* 13/286, H. 2.

## *Objection to the Argumentation*

However, in refuting the statement of those who provide the aforementioned narration as evidence, it may be said that the Imam's words, "*...with yet stronger reason, it must be handled with precaution,*" hold an instruction leading to a reason-based ruling, because a very important effect results from marriage; that is, reproduction and procreation; therefore, with all the more reason, precaution must be observed in this and similar issues more than other issues like transactions and dealings. For this reason, the word of the Imam by no means holds any indication of the obligation of precaution in issues of the private parts. To explain the matter, let us consider the following example:

When a deputy gives his principal (a woman) in marriage to a man according to the right of deputyship he holds, but the principal had previously dismissed him from this authorization but without informing him, then there will be two rulings regarding this question:

***First:*** This marriage is valid. So, if the woman (principal) does not care for or does not know about this marriage and she gives herself in marriage to another person, then the law of *marrying a married woman* applies to this woman. Accordingly, the man who married this woman according to the authorization of her deputy will be legally required to provide her with alimony. This ruling makes clear the meaning of the Imam's words, "*Marriage is more important, and with yet stronger reason, it*

*must be handled with precaution—more than any other question, because marriage is a matter of chastity and the source of (giving birth to) children."*

***Second:*** If the authorization under which the deputy has given his principal in marriage to another person is decided as void, then the marriage is illegal, and it cannot be an example of *marrying a married woman*.

The effects resulting from any marital issue are restricted to two findings only; either obligation or forbiddance. To put in plain words, if the principal (woman) in the aforesaid example is decided as the lawful wife of the man who married her through her deputy, then it is obligatory on that man to provide her with alimony; but, if their marriage is decided as illegal, then to copulate with her is forbidden to him. This is what we meant by the matter being one of two, and nothing more: either obligation or forbiddance. So, there is no space for precaution in the question at all.

If we decide the marital contract concluded by the deputy to be apparently legal, although it is actually illegal, then the disadvantage will be less than its being apparently illegal but actually legal. Accordingly, the Imam's statement, '*with yet stronger reason, it must be handled with precaution*' will come to mean that even if the deputy was actually dismissed by the principal, the marital contract he concluded will turn into a form of the so-called *al-nikāḥ al-fuḍūlī* (marital contract of an unauthorized deputy). Thus, precaution in the marital contract

of an unauthorized deputy comes to mean that the woman must agree to authorize the deputy to conclude marital contracts on behalf of her; otherwise, the issue will not be valid and legally binding. In other words, if precaution is observed in this case, it will take no other form than that the woman says, "*It is true that I have dismissed the deputy and that his authorization is invalid, but according to precaution, I now agree to authorize the contract he concluded on behalf of me."* Accordingly, it is impossible to claim that the Imam's words, "*with yet stronger reason, it must be handled with precaution"* refer to a mandatory obligation (of observing precaution in the issue and its likes).

***Third Narration: Abū-Baṣīr's Passably Reported Narration***

Hushām ibn Salīm reported Abū-Baṣīr to have said that he once asked Abū-Ja'far (Imam al-Bāqir) about a woman who said to her husband, "I am pregnant, I am your foster-sister, and I have not observed a waiting period (*'iddah*)." Answering Abū-Baṣīr, the Imam replied, "If he has already copulated with her, he must not believe her claim; but if he has not yet consummated his marriage and has not copulated with her, he must then examine and ask if he had not known her before."[1]

However, the version of this narration according to (Shaykh al-Ṭūsī's) *Tahdhīb al-Aḥkām* (7/433, H. 37) reads, *"...he must*

1 Al-Kulaynī, *al-Kāfī* 5/526, H. 20.

*then investigate (the matter) and ask...*" instead of "*... he must then examine...*"

The version of the narration according to (Shaykh al-Ṣadūq's) *man-lā-yaḥḍaruhu'l-faqīh* (3/470, H. 4640) reads, *"... he must then observe precaution and ask..."*

## *Simplified Explanation of the Argumentation*

The essential point that refers to the matter at issue in the narration is the second paragraph of the Imam's answer, where he openly states that the man must not believe the woman; rather, he must examine and investigate the matter.

It must be noticed that this narration has been recorded in three reference books; namely, Shaykh al-Kulaynī's *al-Kāfi*, Shaykh al-Ṣadūq's *man-lā-yaḥḍaruhu'l-faqīh*, and Shaykh al-Ṭūsī's *Tahdhīb al-Aḥkām*; and each book has mentioned a different expression in the sentence that denotes the essential point of the issue.

As for *al-Kāfi*, the expression involved is: '*...he must then examine and ask...*'

In *Tahdhīb al-Aḥkām*, the expression is: '*...he must then investigate...*"

In *man-lā-yaḥḍaruhu'l-faqīh*, the expression is: '*...he must then observe precaution...*"

Trying to justify the difference in these three expressions of the same sentence, al-Muḥaddith al-Kāshānī says,

> In *al-Kāfī*, the expression is: "*…he must then examine…"* which means that the man must inspect whether the woman was truthful or she told a lie with regard to her claim. In *Tahdhīb al-Aḥkām*, the expression is: "*…he must then investigate…*" which means that the man must exert all possible efforts in order to arrive at the truth about the woman's claim. In *man-lā-yaḥḍaruhu'l-faqīh*, the expression is: *"...he must then observe precaution…*" which means that the man must not copulate with that woman until he makes sure that her claim was false and that she lied to him.

Those who cite this narration as their evidence state that based on the version of the narration mentioned in *al-Faqīh* and *al-Kāfī* where the expressions "*examine"* and "*investigate"* are mentioned, the implication of the narration suggests that it is obligatory to observe precaution when there is doubt whether it is legal to marry a woman who claims the existence of lawful obstacles of marrying her, and it is also obligatory not to rush to marry such women. Of course, this ruling is applicable to all similar issues in the field of matrimony when the external subject matter of the case is doubted. In other words, it is obligatory to observe precaution when one doubts whether such a woman is to be included in the category of women who must not be married according to the religious law. It is therefore

compulsory to observe precaution and not to venture upon such marriage before being sure of its legality.

In such cases as when a woman claims that she is pregnant and we doubt whether she told the truth or a lie, if we depend totally upon the practical principles of Muslim jurisprudence, then it is obligatory upon us, according to the rules of jurisprudence, to employ the jurisprudential rule of negative assumption of continuity (*istiṣḥāb ʿadamī*; assuming the absence of a state when an accidental occurrence of it is doubted or claimed thereafter) and decide that the woman is not pregnant. Similarly, when a woman claims that she is a man's foster-sister, that man is required to employ the same rule of negative assumption of continuity, which entails that he must decide that she is not his foster-sister.

However, the point to be argued is that, despite the existence of an assumption of continuity in the subject matter of this issue and its like but not in the ruling of it, and in the light of the fact that such assumption of continuity is regarded as acceptable evidence, the Imam says, "…*he must observe precaution*."

It seems necessary to mention several points in this regard:

***First Point***: The veracity of such claims like a woman's being her spouse's foster-sister, being under the waiting period of a previous marriage, or being pregnant, cannot be told except by the woman herself. In other words, the finding of such matters goes back to the woman herself in the first degree;

notwithstanding, the Imam has judged directly that the woman's claim should not be accepted as true and that precaution must be observed in such cases. As a result of and on the basis of the woman's claim, an apparent ruling comes into view. Yet, on the basis of the general rule of assumption of continuity, we are required to unhand this apparent ruling. Then, this question is posed: Can we say that this case is one of the issues that involve contradiction between the apparent ruling and the general rule?

***Second Point***: The aforesaid narration includes all the instances when doubt is stemmed from the woman and her claims, but it does not involve the instances when the man doubts. In other words, in such a case when a man who intends to marry a woman doubts whether this woman is or is not his foster-sister; yet, the woman does not claim so—the narration involved does not deal with such cases.

***Third Point***: Is there any difference in the judgment if doubt is raised before or after the consummation of marriage? Yet it is said that, if the woman claims that she is her husband's foster-sister before the consummation of their marriage, then it is obligatory upon the man to observe precaution; but, if she claims so after the consummation, then it is not obligatory to observe it. Does this mean that when the husband copulates with his wife, then she is no longer his foster-sister?

## *Objections to the Argumentation*

In fact, there are a number of argumentative objections that are raised against those who provide the aforesaid narration as their evidence (on the obligation of observing precaution in issues of private parts):

1. The first argumentative objection is the divergence in the words of the narration, especially when we take into consideration the fact that the expression at issue according to the version of *al-Kāfī* reads, "*...he must then examine...*" which is the most appropriate and harmonious with the context of the Imam's statement. Besides, *examination* cannot be understood to denote the terminological meaning of *precaution*.

2. According to the narration, the Imam did not directly order the man to avoid marrying the woman who had claimed such things; rather, he ordered that her claims must be examined and investigated. This is in fact evidence that the precaution or examination mentioned by the Imam was an instructive command, but not a religiously binding obligation.

Even if we accept that the narration holds a religiously binding command, many other argumentative objections ensue.

3. The narration does not hold any indication of the obligation of observing precaution when a matter is initially doubted; rather, it refers to the instances when doubts are raised only because of the woman's claim. On the grounds of this fact, the

narration has nothing to do with the claim that it includes instances of initial doubts.

4. The main topic of the narration entails a doubt in the peripheral subject, but not in the religious ruling of the case, while our discussion is focused on instances of doubt in the religious laws of the questions that are related to marital and private parts issues in order to make out the initial practical rule of such issues.

5. It may be said that the tenor of the narration deals with the matter from the angle of rational people's ratification, taking into consideration the fact that the woman claims against herself. Therefore, many general rules of jurisprudence may be put forward, among which are the general rule of "*The rational people's confirmation against themselves"* and the other general rule of "*He who possesses something possesses confirmation of it too*." Even if previously mentioned objections nos. 3 and 4 are not accepted, rational people judge that the woman's confirmation against herself results in one of two matters; either this confirmation results in a certain effect or it does not.

According to religious law, when consummation of marriage and copulation practically take place, then no effect must be taken from such confirmations. Accordingly, rational people and the Legislator generally do not entail any effect from such confirmations; rather, they concentrate on the time such

confirmations were made. However, if consummation has not been yet done, then it is obligatory to observe precaution.

In the light of these objections, the narration's indication of the obligation of observing precaution in marital issues is not complete.

***Fourth Narration: Mas'adah ibn Ziyād Authentically Reported Narration***

Mas'adah ibn Ziyād has reported Imam al-Ṣādiq, on the authority of his father (and forefathers) who quoted the Holy Prophet, as saying,

> "Do not copulate in marriage on suspicion, *and stop acting whenever doubt is raised*."[1]

He says, "It means that when you are informed that the woman you have married had breast-fed you, or she was one of the women who are forbidden for you to marry, or any other similar things, then to stop at this suspicion is better than involving yourself in perdition."[2]

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1 The *italic* statement is not mentioned in Shaykh al-Ṭūsī's *Tahdhīb al-Aḥkām*; rather, it is found in al-Ḥurr al-'Āmilī's *Wasā'il al-Shī'ah*.

2 Shaykh al-Ṭūsī, *Tahdhīb al-Aḥkām* 7/474. The additional statement is an explanation of the philosophy of marriage mentioned after Narration no. 112 of the same book. It is also mentioned in *Wasā'il al-Shī'ah* 20/258, H. 2.

Commenting on this narration, Mullā Muḥammad Bāqir al-Majlisī, a master traditionalist (i.e., one experienced in and an evaluator of *ḥadīth)*, says in his book *Malādh al-Akhyār* 12/485:

> "This narration is apparently authentic. It shows priority of observing precaution in the issues of private parts more than any other issue. The addition 'He says…' is an explanation of the Prophet's words by Imam al-Ṣādiq or the reporters. The expression '*…when you are informed…*' means that you are informed of a piece of information but it has not been proven according to the religious criteria. Perhaps it also means that even if that piece of information does not please you, you must act according to it. However, it is exercising more precaution to act according to that piece of information under all circumstances."

## *Simplified Explanation of the Argumentation*

It may be concluded from the statement: "*and stop acting whenever doubt is raised"* that it is obligatory to observe precaution in such cases, because the word *shubhah* (doubt) has been used in the narration in its all-inclusive implication, which includes all doubts that are raised about the rulings and about the subject matters of the cases. It may also entail that this precaution is a divine command in all issues that are related to matrimony and private parts, including the doubts arising from the origin and the ruling of the dubious issues.

## *Objection to the Argumentation*

1. The word *shubhah* mentioned in the narration is so unlimited, of so broad a spectrum, that it includes cases wherein the origin of the case is doubted as well as other cases wherein a doubt arises from the claims and information told by other persons. According to the statement of the narration, when *shubhah* is mentioned, it is obligatory to observe precaution in all instances that are initially doubted; hence, if a man doubts whether the woman he wants to marry is not his foster-sister, then it is obligatory upon him to refrain from marrying her.

However, the word *shubhah* in this very narration has been explained as follows: In the context of this narration, the word *shubhah* (doubt) does not refer to the initial doubt of the whole issue; rather, it arises from the informing of another person that this woman had nursed the man who intends to marry her, or that she was his foster-sister, or that she is one of the women who are forbidden for him to marry. In such instances, it is obligatory to observe precaution. Yet, when none of such instances exists; rather, when the man himself doubts whether this woman is not his foster-sister, or whether it is legal for him to marry her, or he doubts whether she is originally his sister, then such cases are not considered to be within the instances of *shubhah* and thus they are not among those instances where acting upon precaution is included.

Relying on this explanation, if the statement of "*stop at dubious matters:"* had been mentioned in the narration unaccompanied

by any other statement explaining or restricting its meaning to a certain concept, it would have been possible to consider it to be so general that it would cover all instances, including those of initial doubt; but since the statement was followed by another statement that explains the meaning of *shubhah*, the meaning explained in this case has nothing to do with the question at issue and with the argumentation made by those who provide it as evidence on their claim. The evidence on this argumentation is that some other narrations point out the legality of going on with a marriage in cases where the man initially suspects that the woman he wants to marry is his foster-sister.[1]

However, the following objection may be raised: The explanatory statement mentioned at the end of the narration does not stand for an explanation and clarification of the question; rather, it only holds one of the examples of doubt. Therefore, the word *shubhah* mentioned in the narration should include the topic we are currently discussing in the same way as it includes all other instances of initial doubt. As a result, it must be said that the narration holds a very clear indication of the obligation of observing precaution whenever a doubt suggests itself.

To answer, the explanatory statement mentioned at the end of the narration does not only cite a definite example or a number

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1 For instance, refer to *al-Kāfī* 5/313, H. 40 (the report of Mas'adah ibn Ṣadaqah) and *Wasā'il al-Shī'ah* 17/89, S. (*section no.*) 4, H. 4.

of them; rather, it reads, "*and like matters"* which makes it clear that it is not all kinds of doubts that are meant in this narration, but only the doubts that are like the instances mentioned therein.

Besides, the statement, "*stop at dubious matters"* is not actually mentioned in the version of the narration mentioned in *Tahdhīb al-Aḥkām*. This fact makes it clear that the statement is so general that it needs elaboration. Similarly, the providing of this narration as evidence is refuted by this fact; therefore, there is no indication of the claim involved.

### *Conclusion*

Up to this point, we conclude that it is definitely impossible to prove that it is religiously binding to observe precaution in issues of private parts and marriage; neither through the four previously mentioned narrations nor the common attitude of religious law appertained to this field.

## *Second View: Presumption of Initial Legality of All Things*

As we have refuted the proofs of those who substantiate the application of *the presumption of precaution* to the issues appertained to marriage, it is natural for us to arrive at and discuss the other view that states that the dealing with all issues of marriage must be initially based on *presuming the reason-*

*based and religious law-based legality of all things*, which is a general rule in Muslim jurisprudence. Thus, we, while discussing all the possibilities of approach to the issue of artificial insemination, can hold on to this general rule and decide that all such possibilities are legal as long as there is no decisive and acceptable evidence of prohibition and illegality of these possibilities that may be inferred from Qur'ānic texts and narrations. It goes without saying that precaution, as is demanded by reason and by the religious law, is initially required in all questions, yet we have not found any evidence proving that observation of precaution in such issues is religiously binding.

# Chapter Two

# Methods of Artificial Insemination and Studying Them in the Light of Jurisprudence

In the previous chapter, we proved that the original ruling in issues like that of artificial insemination is to presume the reason-based and religious law-based general rule of the initial legality of all things. The next step is to study the various methods and different divisions of artificial insemination in the light of Islamic jurisprudence and law.

First, it is worth mentioning that there is a great variety of methods, forms, and probabilities of artificial insemination; yet,

we will try in this chapter to study generally the most basic and important methods and forms, especially those that are frequently asked about and faced by people.

## *First Method: Artificial Introduction of a Husband's Sperm into His Wife's Genital Tract*

The first and most common method of artificial insemination is to plant a man's sperm into the genital tract of his legitimate wife via a medical device in response to the problem of the failure of natural insemination. The latter could be caused by a number of such factors preventing the wife or the husband from successful fertilization, including a disorder in ovulation or a dysfunction of the husband's sperm. These factors are typically what compel the spouses to resort to attempting the method of artificial insemination, within certain restrictions, by means of special tools and means, so that the process of insemination might succeed. Such a process might alternatively be undertaken outside the female genital tract, with the result of the process, a fertilized egg, inserted into the wife's genital tract to grow into a viable foetus.

The question here is whether this method of insemination is or is not legal according to the Islamic code of religious law.

To investigate the matter and arrive at an appropriate answer, we will discuss the question in the frame of two fields:

## *First Field: The Jurisprudential Ruling of this Method in Itself, Apart from any other Outlook*

Neither in the holy Qur'ānic verses nor in the traditions of the Holy Prophet and Imams could we come across any considerable evidence stating that insemination by males of females must be done through the natural channels only; consequently, we can apply the rationally and religiously approved rule of the initial legality of all things to the issue involved and, as a result, we must decide the legality of using other means of insemination besides the natural one.

Accordingly, no religious law prevents one from undertaking this method, whether performed by inseminating a female's ovum with a male's semen inside or outside the genital tract and then placing the outcome inside the uterus.

## *Second Field: The Jurisprudential Ruling of this Method, taking into Consideration Other Accompanying Factors that are forbidden by Religious Law*

We turn to ancillary actions that are defined by the religious law as to be forbidden; such actions are not related to the specific process of artificial insemination itself; rather, they are related to other introductory or concurrent things that are prohibited according to the religious law, such as the touching of a woman by non-relatives (men who are legally allowed to marry her), or the looking at the private parts of women by the medicating

physicians – since it is generally forbidden for men to look at a woman's private parts whether they be physicians or any other persons, because, according to the religious law, no one is allowed to look at a woman's private parts except her husband.

This aspect of the issue at hand puts forward an important point to be discussed: If the insertion of a husband's sperm into his wife's genital tract necessitates that the physician looks at and/or touches her private parts, is such a process of artificial insemination lawful? Can such actions, necessary in order to complete artificial insemination, be considered obstacles that by law are forbidden, preventing the process of insemination from being undertaken?[1]

Of course, there will be no problem if the medicating physician is the woman's husband. In this case, there is no obstacle at all preventing operating that process of artificial insemination and, as a result, the topic must then be discussed under the aforesaid first field, which concludes that it has been proven to be lawful according to the rationally and religiously approved general rule of the initial legality of all things.

Yet the discussion of the other cases than that just given must be founded on two suppositions:

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1 It is worth mentioning that the current discussion is not only related to the issue of artificial insemination, but it also has something to do with all affairs that are related to surgical issues to be discussed in the light of Muslim jurisprudence.

The first supposition is that the married couple's failure to produce offspring may create a critical sort of anxiety situation, even causing collapse of their marital life, not to mention the other problems that typically and naturally result from the unmet desire to have children. In this case, the general jurisprudential rule of "*all critical situations are prohibited*" (*lā-ḥaraj*) must be applied to this case to remove this obstacle. I have already discussed this general rule and concluded that it is applicable to all compulsory laws, not to the obligatory ones only; therefore, this rule must be applied to the forbidden things too, yet certain points and criteria must be taken into consideration, the details of which have been mentioned in my thesis on this rule.(1)

On the strength of this fact, when there is neither an obstacle nor a religious prohibition preventing the medicating male physician from touching or looking at the woman's private parts, the process of artificial insemination becomes legal.

The second supposition comes in the form of the following question: If there is neither emergency nor critical situation in the issue, will it then be licit for the medicating physician to touch and look at the woman's private parts in order to perform the operation of artificial insemination with no other purpose than medicating her?

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1 See, *Qā'idat lā-ḥaraj*, by the author of this book.

Under this supposition, both spouses have a mental desire to have children, but, though they cannot, they can live together and go on their marital life healthily without any problem stemming from the lack of children, just like other couples; therefore, their decision to have children through artificial insemination may not be a case of emergency without which the continuity of their life as spouses may be threatened; rather, they only intend to find a treatment for this problem. In plain words, this idea can be put in the form of a question, as follows:

*According to religious law, is it lawful for spouses to treat their problem of childlessness by means of artificial insemination although they are neither compelled to do so nor do they have any emergency that necessitates it, even if this will raise the possibility that the medicating physician will touch or look at the wife's private parts?*

In fact, this case is similar to the case of a large-nosed woman who wants her nose fashioned to seem natural through the use of plastic surgery for no other purpose than looking more beautiful, although she is not compelled to do so. Of course, such cases are common these days. Is it then religiously legal for such a woman to put her body at the disposal of a male plastic surgeon for no reason other than unnecessary medication that does not amount to an emergency case?

It is possible to say that therapy cannot be applied to operations of beautification in themselves, because plastic surgeries cure only cases of natural defects or certain pains; while therapy is

allowed in cases of emergency and necessity, such as if a woman passes through a heart problem and she trusts a male physician more than a female one; in this case she is allowed, according to the religious law, to see that male physician and seek medication from him.

On the other hand, in non-emergency cases where the reason for a woman's seeing a male physician is no more than an ordinary treatment, is it valid to apply the proofs of the legality of women putting their bodies at the disposal of male physicians who are non-relatives of them to these cases? To put the question in another form, we ask:

*Is it lawful for a woman to see a male physician who is not her relative in order that he may perform a procedure of artificial insemination by implanting her husband's sperm in her genital tract, which necessarily requires that the physician touches or looks at her private parts?*

Before answering this question, let us cite a narration dealing with such a case:

It is acceptably reported that Abū-Ḥamzah al-Thumālī asked Imam al-Bāqir, "If a Muslim woman is afflicted by a fracture or an injury in a private part of her body that is forbidden for men to look at, but a male bonesetter or physician is more experienced in treating her than a female one, is it then legal for him to look at that part?"

The Imam answered, "If she is compelled to do so, then the male physician may treat her, if she is satisfied with that."

The Imam's answer has come in a form of a conditional clause; i.e., he used the conditional particle "*if"* in his answer, saying, "*If she is compelled to do so…".* This means that if the woman is in an urgent need for that male physician to treat her, and she has no other way, then there is no objection to do so.

It is consensually stated that every conditional clause has a certain concept. Accordingly, the Imam's sentence can be understood as follows:

*A woman who is not compelled to see a male physician for treatment is not allowed to show herself before non-relatives, be they physicians or not. But, if she has to do so because a female physician cannot treat her or a sound treatment of her case lies in the hands of a male physician, then there is no objection to her seeing a male physician for treatment.*

Thus we lack any clear-cut religious evidence proving that women are allowed to put their bodies at the disposal of a male non-relative physician for no other reason than their desires for treatment, but without being compelled to do so.[(1)] However, it

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1 With regard to the forbiddance of looking at the body of a non-relative female, some master scholars of jurisprudence have excluded the face and the palms of the hands. I also support this opinion, which I have discussed with details in my elaborate argumentative discussion of the Qur'ānic verse of *ḥijāb* (legal veil).

is not unlikely that one might infer from this narration that, since the topic of treatment is the original criterion of the legality or illegality of the issue involved, then it is legally permissible for a female to see a male physician whenever this thing is required by treatment when there is no female physician to be seen.

## *Explanation*

If we decide that the criterion in the legality of seeing a male physician by females is their urgent need for so, then females are not allowed to see male physicians when there is no urgent need to do so, as also in cases of beautification or surplus safety.

On the other hand, if we decide that the criterion is seeking treatment, be it urgent or not, then it is not a required condition that the woman should be in an urgent need for seeing a male physician; rather, what is binding is the unique availability of only a competent male professional. Therefore, in answer to the given question, the circle of compulsion is limited to the instance of the male physician's being better and more experienced in treating the woman's case than a female physician, meaning that what is meant by compulsion is not that a female physician is actually absent.

## *Some important points*

It seems proper to mention the following important points:

***First Point***: The proofs of the forbiddance of looking at and touching non-relative females are so general that they include all cases that are free of critical and difficult situations, such as if a husband has already had two children but he desires to have a third one but cannot by natural means, necessitating attempting a procedure of artificial insemination. Of course, performing such a surgical procedure will inevitably lead to the male non-relative physician's looking at and touching the wife's private parts. In this case, it is illegal to do such an operation.

***Second Point***: The main topic of the narration involved is in fact different from the topic at issue. In no place does the narration refer to the topic of the non-relative male's looking at a woman's private parts; therefore, the legality of seeing a female physician must be supposed in both cases of emergency and nonemergency. It seems that the legality of seeing a female physician for treatment is an unquestionable issue.

However, the main topic to be discussed hereinafter is the legality of artificial insemination, which in most cases requires looking at and touching the private parts. Of course, as has been previously mentioned, the illegality of looking at and touching the private parts is applicable to both males and females without any difference between the two, because a woman looking at the private parts of another woman is illegal except in cases of emergency. Accordingly and based on the implication of the narration involved, it is not possible to decide the legality of any operation of artificial insemination at all, even if this operation is performed by a female physician, when the case is not urgent;

when a critical situation could result from refraining from doing this operation.

In conclusion, artificial insemination in its earlier form is illegal even if the treating physician is a female and there is damage or critical situation to appear the otherwise.

***Third Point***: The following question needs an answer: Do the proofs of the forbiddance of looking at and touching non-relative women deal exclusively with the outside parts of the body, such as hair and flesh, or does it include the internal parts, too?

To put the question in another practical form, let us suppose that a male physician is about to perform a surgical operation inside the abdomen of a woman without touching any of her outside body parts or looking at them; rather, a female surgeon creates the incision that opens the woman's abdomen, and then the male surgeon performs the operation to her heart or intestines; in such a case, the following question is posed: Is it illegal for the male surgeon to look at the interior parts of the woman's body or to look at her heart or intestines?

The answer to this question depends upon investigating the proofs of the forbiddance of looking at and touching the body parts of women, such as the holy Qur'ānic verse, "*Say to the believing men that they cast down their looks…* (24/30)." The question posed here is the following: Do such proofs forbid looking at the outside body parts of women only?

Undoubtedly, details of the discussion of this topic must be thrashed out within the issue of marital laws. Yet, in general, we can say that the Qur'ānic verse involved the forbiddance of looking at the outside of the private parts; that is to say, Allah the Almighty in this verse has prohibited the believing men from looking at the private parts of believing women, and vice versa; therefore, the verse does not hold any indication of the forbiddance of looking at the other exterior or interior parts of the body.

## *Second Form: Artificial insemination between a man and a marriage-unrelated woman*

### *Details*

One form of artificial insemination is done by introducing the sperm of a man into the genital tract of a woman who is not his legitimate wife. Generally, this method can be conceived of through the following two instances:

***First Instance***: The reason for the inability to have children lies with the husband in such a manner that his sperm is too weak to fecundate the wife's ovum. In such cases, the wife's ovum is inseminated by the sperm of a man other than her husband.

***Second Instance***: The reason for the inability to have children lies with the wife. In such cases, the husband's sperm fecundates the ovum of a woman other than his wife. Of course,

from this instance arise various sub-instances, the most common of which are the following three cases:

1) The recipient of the husband's sperm for fecundation is the wife of another man.

2) The recipient of the husband's sperm is currently unmarried.

3) The recipient of the husband's sperm is another wife or bondmaid of the husband.

These two instances, along with their sub-instances, can be put under a general title that reads: ***Introducing the sperm of a man into the ovum of a woman who is not related to him by legitimate marriage.***

Since each of the aforesaid instances leads to the rise of a big variety of cases, we will study each instance separately. Let us begin with the first instance only, while the latter instance will be discussed under the title "***Third Form***", where it will be probed and investigated in the light of Muslim jurisprudence.

It is noteworthy that we have already discussed with details the two instances, along with all of their secondary issues, under the sketch mentioned in the introduction to this book.

## *The Religious Judicial Ruling of the Earlier Form of Artificial Insemination*

Reaching a final jurisprudential ruling about the legality or illegality of the second form of artificial insemination depends upon answering the following imperative question: Is it legal to introduce the semen of a man into the genital tract of a marriage-unrelated woman?

This question has been answered with yes and no by two groups of scholars. Therefore, we will investigate the proofs provided by each group and try to come to the most acceptable answer in the light of the Islamic code of religious law and the principles and general rules of Muslim jurisprudence.

## First View: Illegality of this form of Artificial Insemination

Those who answer with a no provide three groups of proofs as their evidence:

### *First Group: Narrations Reported from the Sources of Legislation*

The first narration in this respect is recorded in three books: by Shaykh al-Kulaynī in *al-Kāfī*, Shaykh al-Ṣadūq in *Iqāb al-A'māl*, and al-Barqī in *al-Maḥāsin*. However, we will cite the narration as it has been recorded in the first book:

ʿAlī ibn Ibrāhīm has reported his father on the authority of ʿUthmān ibn ʿĪsā on the authority of ʿAlī ibn Sālim who reported Abū-ʿAbdullāh (al-Ṣādiq) as saying,

> "Verily, the most punished one on the Resurrection Day shall be a man who introduced his semen (*nuṭfah*) into a uterus that is forbidden to him."[1]

According to (the book of) *Daʿā'im al-Islām*, the Holy Prophet is reported to have said,

> "… and the most punished one on the Resurrection Day shall be he who has introduced his semen into a uterus that is forbidden to him."[2]

According to *al-Jaʿfariyyāt* and *Daʿā'im al-Islām*, Imam ʿAlī is reported to have quoted the Holy Prophet as saying,

> "Apart from polytheism, there is no sin graver in the sight of Allah the Almighty than a man's introducing an illegal sperm into a uterus that is forbidden to him."[3]

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1 *Al-Kāfī* 5/541, H. 1; *Thawāb al-Aʿmāl wa-ʿIqāb al-Aʿmāl*, pp. 310; *al-Maḥāsin* 1/192, S. 46; al-Ḥurr al-ʿĀmilī, *Wasā'il al-Shīʿah* 20/317, S. 4, H. 1.

2 Al-Nuʿmān al-Maghribī, *Daʿā'im al-Islām* 2/447.

3 Jaʿfar al-Qazwīnī, *al-Jaʿfariyyāt*, pp. 99; *Daʿā'im al-Islām* 2/448.

A narration of the same denotation has been mentioned in Ibn Abī-Jumhūr al-Aḥsā'ī's *'Awālī al-La'ālī* (1/259, Ch. 10).

Of course, the statement "*a uterus that is forbidden to him"* mentioned in the narration stands for the absence of any legitimate marital tie (such as marriage or serfdom) between the owner of the sperm and the owner of the uterus. This, however, means that it is legal to use (or introduce a sperm into) a genital tract the owner of which is connected to the owner of the sperm through a legal relationship, such as legitimate marriage or serfdom.

If we take into consideration the fact that all these narrations have the same meaning and resemble each other even in expression, we will come to know confidently the reality of the narration mentioned in *al-Kāfī*. For this reason, we will investigate the features of inferring evidence from this narration from two angles, as follows:

## *First: Investigating the Narration's Chain of Authority (sanad)*

There is no objection to the narration's chain of authority;[1] rather, our discussion must be focused on the master biographers' arguments about 'Alī ibn Sālim. Among the

1 *Sanad* or *isnād*: A list of authorities, who have transmitted a report, and its reliability, determines the validity of that report or narration.

transmitters of traditions, there are two persons holding the name of ʿAlī ibn Sālim. One of them is ʿAlī ibn Sālim al-Baṭā'inī[1] the Wāqifist,[2] and the other one is ʿAlī ibn Sālim the anonymous.[3]

Concerning this confusion between the two reporters, a master scholar of biography says, "Since ʿAlī ibn Sālim mentioned in this narration is anonymous, the narration ceases to be valid and acceptable."[4]

In my conception, it is possible to remove the ambiguity in this narration's chain of authority through the following two ways:

## *The first way: General Certification of Trustworthiness*

The general certification of trustworthiness of a transmitter of a narration that is confirmed by the master biographers is

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1 ʿAllāmah al-Ḥillī, *Khulāṣat al-Aqwāl*, pp. 363-4, No. 1426.

2 *Wāqifī*: A follower of the faction of *wāqifah*; those who suspended Imamate on Imam al-Kāẓim and refused to accept the Imamate of the following Imams.

3 Shaykh al-Ṭūsī, *Ikhityār Maʿrifat al-Rijāl* (famously known as *Rijāl al-Ṭūsī*), pp. 242, No. 312 & pp. 244, No. 347; Abu'l-Qāsim al-Khū'ī, *Muʿjam Rijāl al-Ḥadīth* 10/82.

4 Shaykh Muḥammad Mu'min al-Qummī, *Kalimātun Sadīdah*, pp. 82.

accounted for by investigating the narrations' chains of authority and recognizing the trustworthiness of its reporters. Reference books specialized in studying the lives and conducts of the reporters of narrations (*riṭāl* books) provide details upon this topic. For instance, Shaykh al-Mufīd and other master scholars have depended upon this way of general certification in deciding as trustworthy the companions of Imam al-Ṣādiq, excluding some persons whom have been openly decided as weak (*ḍa'īf*: unacceptable in reporting).(1) Taking this method of authentication, some scholars believe that all the companions of Imam al-Ṣādiq introduced as trustworthy in Shaykh al-Ṭūsī's book of biography (*riṭāl*) must be decided as reliable and trustworthy. Referring to this point, Sayyid al-Khū'ī says,

> All the companions of Imam al-Ṣādiq whose names are mentioned by Shaykh al-Ṭūsī in his book of *rijāl* are said to be trustworthy. Providing evidence on this claim, the following passage of Shaykh al-Mufīd about the manners of Imam al-Ṣādiq is quoted: "Scholars of *ḥadīth* listed the names of the trustworthy reporters who reported from Imam al-Ṣādiq, despite their different opinions and trends, and the outcome was four thousand persons (i.e., reporters from the Imam)."(2)

1 Shaykh al-Mufīd, *Kitāb al-Irshād* 3/179.

2 Abu'l-Qāsim al-Khū'ī, *Mu'jam Rijāl al-Ḥadīth* 1/55.

Among the other master scholars who have agreed to this way of general certification is Shaykh al-Ḥurr al-ʿĀmilī. In his biography of Khulayd ibn Awfā, al-ʿĀmilī he says:

> It is not improbable to decide Khulayd, as well as the companions of Imam al-Ṣādiq, as trustworthy, with the exception of those whom have been decided as weak (in reporting), because al-Mufīd, in his book of *al-Irshād*, Ibn Shahr'āshūb, in *Ma'ālim al-'Ulamā'*, and al-Ṭabarsī, in *I'lām al-Warā*, have decided as reliable and trustworthy four thousand persons among the companions of Imam al-Ṣādiq; while the names of those companions that are recorded in all books of biography (*rijāl*) and traditions (*ḥadīth*) do not amount to three thousand. However, ʾAllāmah al-Ḥillī and others have confirmed that Ibn ʿUqdah recorded the names of all those four thousand persons who are mentioned in books of biography.[1]

Upon this reference, ʿAlī ibn Sālim should be decided as acceptable, as reliable and trustworthy, although he is anonymous, according to the method of general certification that is adopted by Shaykh al-Mufīd.

On the other hand, the late master scholar Sayyid al-Khū'ī, though having in his early days considered these general certifications of trustworthiness to be acceptable proofs, retreated this opinion in his last days and decided that some of

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1 Al-Ḥurr al-ʿĀmilī, *Amal al-Āmil* 1/83.

such general certifications, some of which are those ascribed to Shaykh al-Mufīd, should not be regarded as acceptable evidence. Therefore, taking into consideration the final decision of al-Khū'ī, the chain of authority of the narration at issue faces a problem.

In my conception, however, the general certification of trustworthiness decided by Shaykh al-Mufīd, not to mention the eminent scholarly reputation he enjoys, is sufficient to prove the trustworthiness of all the companions of Imam al-Ṣādiq except for those who have been clearly decided as weak. As a result, ʿAlī ibn Sālim's report must be decided as acceptable.

## *The Second Way: Ibn Abī-ʿUmayr and Others Reporting from ʿAlī ibn Sālim*

If this ʿAlī ibn Sālim is the same ʿAlī ibn Sālim al-Kūfī, then the narrations of this man were reported by such eminent persons as Ibn Abī-ʿUmayr and Yūnus ibn ʿAbd al-Raḥmān. It is well known that one of the ways of deciding the reliability of a reporter is that eminent scholars reported from him directly. So, if it is not possible to prove the authenticity of a narration by way of general certification of their reporters' trustworthiness, then this way (of eminent scholars' having reported from that doubted reporter) is sufficient to decide the authenticity of the narration as recorded in *al-Kāfī*. It is worth mentioning that our conclusion depends upon proving that this ʿAlī ibn Sālim is the same ʿAlī ibn Sālim al-Kūfī.

To come to the point, I believe that this narration is acceptable and it cannot be argued from the aspect of its chain of authority.

It is worth mentioning that al-Majlisī, in *Rawḍat al-Muttaqīn* (9/441), commented on the acceptability of this narration by saying, "The authenticated (*muwaththaq*) is as valuable as the authentic (*ṣaḥīḥ*)."

## *Denotation of the Narration*

To explain the way of inferring evidence (on the forbiddance of the second form of artificial insemination) from the narration involved, it seems necessary to begin with simplifying the meanings of some expressions mentioned therein.

### *A. Nutfah (sperm or semen)*

About the semantic meaning of the Arabic word *nutfah*, al-Jawharī, in his famous Arabic-Arabic dictionary *al-Ṣiḥāḥ* (3/1186), says,

> ***Nutfah***: Pure water, be it little or much.

As for Ibn Manẓūr, in *Lisān al-ʿArab* (9/334), he explains the word *nutfah* and mentions its semantic meanings as follows:

> ***Nutfah***: Little water that remains in a bucket. *This meaning has been reported from al-Laḥyānī, too. Nuṭfah* is also said to denote pure water, be it little or much. Its plural forms are *nuṭaf* and *nuṭāf*. However, al-Jawharī has made a distinction between these two terms that are used

> as the plural form of the word *nuṭfah*, saying, "The word *nuṭfah* means pure water, and its plural form is *nuṭāf*; but when the same word is used to mean the fluid of males, its plural form becomes *nuṭaf*."

Explaining the word *nuṭfah*, al-Rāghib al-Iṣfahānī says in *al-Mufradāt fī Gharīb al-Qur'ān* (pp. 496),

> ***Nuṭfah***: Pure water. The word is also used to express the fluid of males.

Based on al-Jawharī's explanation of the word *nuṭfah*, it semantically means pure water and the fluid of human males. Nevertheless, some other lexicographers argue that this word stands for the formation resulting from the union of a man's sperm and a woman's ovum. Referring to this point, the author of *Kalimātun Sadīdah* says,

> What is apparently meant by *nuṭfah* is exactly the substance formed from the union of a man's sperm and a woman's ovum. This substance is the first thing formed in a human being's creation, as is confirmed in the authentically reported narration of Isḥāq ibn ʿAmmār about warning against using a medicine that leads to the abortion of a foetus. According to this narration, Imam Abu'l-Ḥasan (al-Riḍā) is reported to have said, "The first thing that is created is the *nuṭfah* (meaning: the formation

> resulting from the union of a man's sperm and a woman's ovum).[1]

In my opinion, this meaning of *nuṭfah* is yet not complete. The evidence for this claim can be derived from the same narration involved, in which the Prophet (or the Imam) ascribes *nuṭfah* to the male, saying, "*...a man who introduced his semen (nuṭfah)...*" Of course, the traditional meaning of this expression—which may entail that the word *nuṭfah* stands for the substance resulting from the union of the man's sperm and the woman's ovum—does not affect the actual meaning of it.

At any rate, what is meant by *nuṭfah* in these narrations is the metaphorical meaning of the word, in view of the effective role played by the male's sperm in the formation of that substance; therefore, the formation has been expressed as *nuṭfah* as a form of *using the name of a part (of a thing) for the whole (of it)*, which is one of the rhetorical expressions commonly used in Arabic language.

Based on the previous discussion, the aforesaid words of the lexicographers, and the apparent meaning of the narration involved, it becomes clear that the meaning intended by the use of the word *nuṭfah* is not the combination of sperms and ova; rather, it is the fluid of the male; i.e. the semen, unless there is a context proving the opposite.

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1 Shaykh Muḥammad Mu'min al-Qummī, *Kalimātun Sadīdah*, pp. 84.

***B. Introducing the Sperm (into the genital tract)***

Any sexual relationship between a man and a woman who is not his legitimate wife can be understood through one of the following two ways:

The first way is illegal copulation (i.e. sexual intercourse) that is adultery, which is usually accompanied by introducing the male's sperm into the female's genital tract. Yet such intercourse is sometimes accompanied by sexual union (by entering the male genital organ into the female's) without introducing the sperm into the female genital tract. In both cases, the process is decided as fornication (or adultery) whether the sperm is or is not introduced into the female genital tract.

The second way is introducing the sperm into the genital tract of a marriage-unrelated woman, taking into consideration that this process is done without copulation, no matter what means is used in this process.

There is obviously a general and a specific aspect between these two ways. From a certain angle, it is unlikely that the process of introducing sperm into the genital tract without the entering of the male genital organ into the female's vagina would be decided as fornication.

Essentially, if we discuss the enormity of sin brought about by introducing sperm into the genital tract of a marriage-unrelated woman and causing a child to be born illegally, then there is no

difference whether the process of introduction of the sperm into the genital tract was or was not performed by means of copulation, natural sexual intercourse. If a man, using any means whatsoever, introduces his sperm into the genital tract of a marriage-unrelated woman, causing an illegitimate child to be born, this sin remains the same.

Of course, the narration at issue has nothing to do with fornication and illegal sexual intercourse, because fornication, being a grave sin, is clear and known by everybody. Besides, Allah the Almighty has openly commanded not to even *go nigh to fornication* (Holy Qur'ān, 17/32).

The narration then touches on the second way (of introducing the sperm into the genital tract), which is definitely different from fornication in its broad meaning and even further than it. To explain: because a fornicator exceeded all bounds and arrived at the highest level of disobedience, impudence, and rebellion against the rules defined by the Almighty by introducing his sperm into the genital tract of a woman in an illegitimate way, Allah the Almighty threatened him with the most intense chastisement on the Resurrection Day.

Thus, if this intense chastisement is applied to any process of introducing sperm into the genital tract of a marriage-unrelated woman, then there is no difference whether this process of introduction of sperm is done by means of copulation or any other (artificial) means that could result in the giving birth to an illegitimate child.

To put the question in plainer words, if we cancel the peculiarity of illegal sexual intercourse and copulation that naturally accompanies fornication, as mentioned in the narration involved, then we can say that the narration has decided the criterion of being included with this kind of chastisement. This criterion is the introduction of a man's sperm into the genital tract of a marriage-unrelated woman. If it is possible for us to argue that there is no involvement of the topics of fornication and copulation in the narration; rather, the one and only subject matter of such a sin as one deserving such a chastisement is the introduction of the sperm into the genital tract of a marriage-unrelated woman, in such cases when the process of artificial insemination is done by combining the man's sperm with a marriage-unrelated woman's ovum, only then the question of introducing the sperm into the woman's genital tract is materialized, although illegality of this process is still effective.

Thus there is a definite subject matter for the process of introducing the sperm into the genital tract of a marriage-unrelated woman, to which subsequently applies that most intense chastisement to those who commit the act of introducing the sperm into the genital tract of a marriage-unrelated woman, even if this process is made without copulation of the man with the woman and without his entering his genital organ into hers, as long as a process of introducing the sperm into the genital tract can be done by other means than the natural.

## *Discussion of the Argumentation*

Noticeably, the general sense that is claimed as inferred from the narration (i.e., the illegality of all means of introducing a man's sperm into the genital tract of a woman who is not matrimonially related to him) cannot be clearly found in the narration; rather, it is ambiguously problematic and imperfect, for the following reasons:

***First***, the words of the Imam apparently ascribe the introduction of sperm into the genital tract to the owner of the sperm himself. Thus, the Imam says, "*...a man who introduced his semen into a uterus...*" In view of that, this matter (of introduction of sperm) does not include all the instances of the second form of artificial insemination, even if we agree to the claim of the generalization in the narration's implication and refuse to restrict it to the direct introduction of sperm through natural sexual intercourse. The reason is that, if we suppose that the general sense of the narration includes all kinds of sperm introduction into the genital tract of a marriage-unrelated woman via any means other than the natural, then there must be at least some cases to be excluded from the general sense of the narration, such as the following:

1. If the process of the introduction of a man's sperm into the genital tract of a marriage-unrelated woman is done by a person other than the owner of the sperm, while this person has already been aware of this matter, then it is improbable that the general sense of the narration includes this case.

2. Even if we accept that the instance just given is included with the general sense of illegality inferred from the narration, it is still restricted to the case when the owner of the sperm does not know that his sperm will be introduced into the genital tract of a marriage-unrelated woman. As a result, it is definitely impossible to apply the narration's general sense of illegality to this case.

The same case can be put in the form of a question, as follows: As for a man who does not know who introduced his sperm into the genital tract of a marriage-unrelated woman, and a woman who does not know to whom the sperm that has been introduced into her genital tract belongs, is it possible to decide that they are to be included with *the most punished persons on the Resurrection Day*?

A clear-cut example of the case involved is found in and discussed as part of the issues of the religious penal laws (i.e., *ḥudūd*). If a woman who, shortly after engaging in sexual intercourse with her husband, commits a lesbian act with another woman, causing the sperm of her husband to be introduced into the genital tract of that woman, in this case it is unacceptable to decide that the lesbian wife or her husband or both of them are included with the *most punished persons on the Resurrection Day*, decided in the narration at issue.

***Second***, in addition to the general sense of illegality that is claimed as inferred from the narration, there is another probability that can be understood from the same narration; that

is, we can say that the narration specifically talks about the introduction of sperm into the genital tract of a woman who is not connected to the owner of the sperm by any legal marriage relationship, provided that this sperm introduction is made by a means of natural sexual intercourse exclusively. This suggestion is not unlikely, because the supposition of engagement in sexual intercourse between the man and the woman is too clear to require details; therefore, the narration has not mentioned it.

In other words, in view of the apparent meaning of the narration, it is probable that it specifies most directly natural sexual intercourse, when done illegitimately, as the reason for the most intense punishment on the Resurrection Day, rather than any other artificial means of sperm introduction into the genital tract of a marriage-unrelated woman; therefore, a man who introduced his sperm into the genital tract of a woman other than his wife by another means than natural sexual intercourse is not included with those *most punished persons on the Resurrection Day*.

It goes without saying that, if a man commits adultery with a woman and introduces his sperm into her genital tract, then the child that is formed from such an act is decided as *illegitimate*; but if the introduction of a man's sperm into a marriage-unrelated woman's genital tract is made via a certain means or mechanism other than natural sexual intercourse, meaning that no adultery was committed in the process, then, even if we decide such a process as illegitimate and forbidden, the child born as a result of this process cannot be decided as whoreson

***NOTE: See above***; rather, it is decided as an illegitimately born child.

To sum up, if the commitment of adultery and sexual intercourse are specified as the special subject matter of the narration's implication, or at least if these two matters are supposed to be so, then this supposition is sufficient evidence to prove the impossibility of inferring that the punishment mentioned in the narration includes all kinds of sperm introduction into the genital tracts of marriage-unrelated women.

### *Conclusion*

In consideration of the argumentative discussion of the given narration, we have succeeded in affirming that this narration does not hold any indication of the forbiddance of the second form of artificial insemination (introducing the sperm of a man into the genital tract of a woman who is not related to him by any marriage relationship), especially when such a process of insemination is done after obtaining the consent of the man (i.e., the owner of the sperm).

## *Second Narration*

The second narration has been reported and recorded by Shaykh al-Ṣadūq on two different pages of his reference book *man-lā-yaḥḍaruhu'l-faqīh*, as well as in his other book, *al-Khiṣāl*. The

version of the narration according to the latter book is as follows:

> Muḥammad ibn al-Ḥasan (may Allah be pleased with him) has narrated to us, saying: Saʿd ibn ʿAbdullāh has reported on the authority of al-Qāsim ibn Muḥammad who reported Sulaymān ibn Dāwūd as saying: I heard more than one of our acquaintances (i.e. brothers-in-faith) reporting Abū-ʿAbdullāh (al-Ṣādiq) to have quoted the Prophet as saying,
>
> The son of Adam (i.e., a human being) shall never commit any deed that is graver in the sight of Allah (the All-Blessed and All-Exalted) than the deed of a man who killed a prophet or an Imam, or destroyed the Kaʿbah that Allah (the Almighty and All-Majestic) decided to be the direction of worship for His servants, or poured his fluid into a woman in an illegitimate way.[1]

Hereinafter, we will discuss argumentatively this narration from two aspects; (1) its chain of authority and (2) the claimed inference of the illegality of all kinds of insemination from it.

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1 The narration is mentioned in the following reference books of Shaykh al-Ṣadūq: *man-lā-yaḥḍaruhu'l-faqīh* 3/559, H. 4921 & 4/20, H. 4977; *al-Khiṣāl* 1/120, H. 120.

## *Investigating the Narration's Chain of Authority*

We have earlier mentioned that Shaykh al-Ṣadūq recorded this narration in two of his books; in *man-lā-yaḥḍaruhu'l-faqīh*, he mentioned the narration without its chain of authority (*mursalah*), but in *al-Khiṣāl*, its chain of authority is completely recorded (*musnadah*). We will therefore investigate the narration's chain of authority on the grounds of its two ways of transmissions.

## *The Narration's Chain of Authority According to al-Khiṣāl*

In the narration's chain of authority that is recorded in *al-Khiṣāl*, there are two problems:

***The first problem*** is that about Qāsim ibn Muḥammad al-Iṣfahānī, who is also known as *Kāsām* or *Kāsūlā*,[1] al-Najjāshī says, "Al-Qāsim ibn Muḥammad al-Qummī, known as *Kāsūlā*, was not fully accepted in transmitting narrations."[2]

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1 Shaykh al-Ṭūsī, *al-Fihrist* No. 127/576; *Rijāl al-Najjāshī* No. 315/863; 'Allāmah al-Ḥillī, *Khulāṣat al-Aqwāl fī 'Ilm al-Rijāl* No. 248/5; *Rijāl Ibn Dāwūd* No. 267/402. However, in Shaykh al-Ṭūsī's book of biography (*rijāl*) No. 490/7, the reporter is named *Kāsām* instead of *Kāsūlā*.

2 *Rijāl al-Najjāshī*, 315.

Like al-Najjāshī, Ibn al-Ghaḍā'irī argues the acceptability and unacceptability of the reports transmitted by this al-Qāsim, saying, "Al-Qāsim ibn Muḥammad al-Iṣfahānī, Kāsūlā, Abū-Muḥammad: Sometimes his reports are accepted, but at other times rejected. However, he might be used as a witness to the authenticity of a certain narration (when it is reported by others besides him)."[1]

To come to the point, to decide Qāsim ibn Muḥammad as a trustworthy reporter is not clear; yet the only point that may help him in this regard is that a group of eminent reporters have reported from him, such as Ibrāhīm ibn Hāshim, Aḥmad ibn Muḥammad al-Barqī, Sa'd ibn 'Abdullāh, 'Alī ibn Muḥammad al-Qāsānī, among others.[2] This point might improve his image with regard to his transmission of narrations, since he has not been decided as trustworthy.

***The second problem*** with the narration's chain of authority lies in the following statement: "*I heard more than one of our acquaintances...*" From this statement, we can deduce three probabilities, as follows:

1. All of these "*acquaintances"* are trustworthy.

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1 *Rijāl Ibn al-Ghaḍā'irī*, Chapter: The Weak Reporters (*al-Ḍu'afā'*) 5/50.

2 Abu'l-Qāsim al-Khū'ī, *Mu'jam Rijāl al-Ḥadīth* 15/47-8.

2. Some of them are trustworthy but the others are not.

3. All of them are not trustworthy.

Based on the first and second probabilities, there is no problem in the narration's chain of authority, but based on the third probability, the narration's chain of authority is unreliable.

## *The Narration's Chain of Authority According to man-lā-yaḥḍaruhu'l-faqīh*

In this book, the author, Shaykh al-Ṣadūq, records the narration blankly; i.e., without mentioning its chain of authority. Specifically, he says, "*The Prophet said*..." and then mentions the text of the narration.

There are three opinions about the *chainless* narrations recorded by Shaykh al-Ṣadūq in his *man-lā-yaḥḍaruhu'l-faqīh*:

***First opinion***: Some scholars of jurisprudence deal with the chainless narrations of Shaykh al-Ṣadūq like the chainless narrations that are reported by the others: they neither accept these narrations nor decide them as provable evidence or validly acceptable proofs.

***Second opinion***: The majority of master scholars of traditions and jurisprudence believe Shaykh al-Ṣadūq's chainless narrations to be as valid and acceptably provable as his completely transmitted ones. This is in fact the same opinion held about the chainless narrations of other master scholars like

Ibn Abī-'Umayr and Shaykh al-Ṭūsī. Furthermore, some scholars trust the chainless narrations of such eminent personages more than the completely transmitted ones, arguing that when an eminent scholar like Shaykh al-Ṣadūq directly reports from the Holy Prophet, this must mean that he confesses to the authenticity of this narration one hundred percent. Of course, this claim must be applicable to the narration at issue, in the sense that Shaykh al-Ṣadūq was certain of the authenticity of the narration because it reached him through an unarguable chain of authority from the Holy Prophet; otherwise, he would not have directly said, "*The Holy Prophet said*..." On the other hand, when Shaykh al-Ṣadūq introduced a narration by mentioning the authorities from whom he had received it, this must mean that he did not have the desire for ascribing that traditions directly to the Infallible (Prophet or Imam); rather, he informed his readers that so-and-so had reported this narration to him. Thus he would no longer be answerable to the authenticity of that narration.

Among those who hold this good opinion about Shaykh al-Ṣadūq's chainless narrations is Shaykh al-Bahā'ī, who, investigating one these chainless narrations, says in his book *al-Ḥabl al-Matīn fi Aḥkām al-Dīn* (p. 11),

> The first narration is one of al-Ṣadūq's chainless narrations that is recorded in *man-lā-yaḥḍaruhu'l-faqīh*. About this book, the author—may Allah have mercy upon him—had mentioned that he is fully convinced of the authenticity of whatever report he had mentioned therein, having full faith

> that he demonstrated the book to be fulfilment of his responsibility before Allah the Almighty. Based on this, these chainless narrations of Shaykh al-Ṣadūq ought not to be less in value than Ibn Abī-ʿUmayr's ones; rather, they ought to be treated as same as Ibn Abī-ʿUmayr's and ought not to be abandoned for no other reason than their being without chains of authority.

A group of *uṣūlists*[1] are reported to have believed in preferring al-Ṣadūq's chainless narrations to his completely transmitted ones.[2]

***The third opinion***: Some recent master scholars like al-Muḥaqqiq al-Nā'īnī,[3] Imām al-Khumaynī,[4] and our late father (al-Fāḍil al-Lankarānī)[5] maintain that the chainless narrations of al-Ṣadūq are of two categories: The first category includes the narrations that are preceded by such expressions like *qīla* (it is said…), *nuqila* (it is reported…), and *ruwiya* (it is narrated…). As for such narrations, it is unfeasible to depend

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1 Uṣūlists are scholars of *ʿilm al-uṣūl*; a branch of Muslim jurisprudence dealing with its fundaments and principles.

2 Shaykh al-Bahā'ī, *al-Ḥāshiyah ʿalā man-lā-yaḥḍaruhu'l-faqīh*, pp. 317.

3 *Kitāb al-Ṣalāt* 2/262.

4 *Kitāb al-Bayʿ* 2/628.

5 *Tafṣīl al-Sharīʿah*, pp. 103.

upon and use them as acceptable proofs. The second category includes the narrations that are preceded by a decisively authenticated chain of authority by Shaykh al-Ṣadūq, about which he says, *qāla* (He said…). This category reveals that Shaykh al-Ṣadūq was positively sure that this narration was said by the Prophet or the Imam.

Expatiating upon the matter, our late father says,

> Chainless narrations are of two categories, in the first of which, the Imam's words, deeds, or confirmations are ascribed to the narrator. So, the author says about such narrations: "*It is narrated that…*" The second category entails the narrations in which the reporter traces back a saying, a deed, or a confirmation to the Imam directly. The authenticity of the narrations of this category cannot be realized unless all of the authorities whose names are mentioned in the narration's chain of authority are proven as trustworthy. Only then, the proofs of the validity of the one-reporter narration (*khabar al-wāḥid*) may be applicable to this narration so that it may be regarded as provable evidence.[1]

Adopting the same opinion, I believe that if we decide to throw away all of Shaykh al-Ṣadūq's chainless narrations, this will lead us to disregard approximately two thousand narrations. Accordingly, such chainless narrations like the one under

1 Al-Fāḍil al-Lankarānī, *Tafṣīl al-Sharī'ah*, pp. 103.

discussion can be seen as completely reported, and there is no objection to their lacking a chain of authority.

## *Final Conclusion*

Even if we argumentatively prove that there is a problem chain of authority in the narration that is mentioned in *al-Khiṣāl*, the narration's chain of authority mentioned in *man-lā-yaḥḍaruhu'l-faqīh* is proven to be so valid and unarguable that it can serve as acceptable proof. Therefore, there is no objection to the narration's chain of authority.

## *Simplified Explanation of the Argumentation*

A number of scholars of jurisprudence have regarded the narration involved as evidence on the forbiddance of the second form of artificial insemination, leaning on the last statement of it, where the Imam says, "*...or poured his fluid into a woman in an illegitimate way.*"

In this statement, the word *ḥarām* (illegitimate way) is neither an adjective describing the state of the *woman* nor is it a circumstantial word that expresses the woman's manner; rather, it is an adjective of an implicit infinitive (i.e. cognate object of the passive). In other words, the Imam's wording mean: *"...or poured in an illegitimate way his fluid into a woman*."

However, this *illegitimate pouring* is so general that it includes all forms of introducing the man's fluid into the uterus of a

marriage-unrelated woman, be it via direct sexual intercourse, or a tool, a device, or a process of artificial insemination.

### *Objection to the Argumentation*

No doubt, when a man introduces his sperm into the genital tract of a woman by way of illegitimate sexual intercourse, this process of sperm pouring into the genital tract is decided as illegitimate; but, if the process is done indirectly through a device, then it is doubted whether this process is an instance of illegitimate sperm pouring. Here, the suspicion lies in the instance, but not in the act (of sperm introduction into the genital tract of a marriage-unrelated woman). If we seek to prove the forbiddance of this kind of pouring of sperm into a female genital tract, we have to cite as evidence the narration at issue, which is in this case regarded as an example of the method of *applying a general proof to suspicious instances*. To the majority of *uṣūlists*, this method is unacceptable.

Consequently, the narration does not hold any evidence on the forbiddance of the second form of artificial insemination that is carried out by placing the man's sperm into the genital tract of a marriage-unrelated woman via a special device.

## *Third Narration*

The three Shaykhs (i.e. master scholars of *ḥadīth*); namely, Shaykh al-Ṣadūq, Shaykh al-Kulaynī, and Shaykh al-Ṭūsī have

recorded the following narration in their books: *man-lā-yaḥḍaruhu'l-faqīh* (6/38, H. 5033) and *ʻIlal al-Sharā'iʻ* (2/543), *al-Kāfī* (7/262, H. 12), and *Tahdhīb al-Aḥkām* (10/99, H. 40) respectively.[1] All of these scholars connect the narration's chain of authority to al-Ḥasan ibn ʻAlī ibn Abī-Ḥamzah al-Baṭā'inī on the authority of Abū-ʻAbdullāh al-Mu'min who reports Isḥāq ibn ʻAmmār; yet, there is a difference among the three Shaykhs with regard to the other reporters who transmit the narration to al-Ḥasan ibn ʻAlī.

In *al-Kāfī*, the narration reads as follows:

Isḥāq ibn ʻAmmār is reported to have said: I asked Abū-ʻAbdullāh, "Which act is more wicked than the other: adultery or consuming an alcoholic beverage? Why is the penal law of consuming an alcoholic drink only eighty lashes, while one hundred lashes have been decided as the punishment of committing adultery?"

Answering me, the Imam said,

> "Isḥāq, the punishment is the same, but additional lashes have been added to the adulterer, because he wasted the sperm and placed it in a place other than the one that Allah the Almighty and All-majestic ordered him to place it."

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1 The narration is also recorded in al-Ḥurr al-ʻĀmilī's *Wasā'il al-Shīʻah* 28/98, S. 13, H. 1.

## *Simplified Explanation of the Argumentation*

There are two points about the implication of this narration:

The first point can be put in the form of the following question: Is the last statement of the narration about stating two illegitimate actions: wasting of the sperm and placing it in an illegitimate place?

To answer, the apparent denotation of the narration reveals that the Imam's words '*because he placed it…*' stand for a further explanation of the earlier words, '*because he wasted the sperm*.' Thus, the Imam wanted to say that the wasting of sperm is an indication of placing it in a place other than the one, which was made lawful for him to place it in and which the Almighty ordered him to place it in.

Recent scholars give the legal opinion that *coitus interruptus* (*'azl*; withdrawal of the male genital organ from the vagina before ejaculation) is not forbidden. In view of that, and apart from the implication of the narration involved, we can conclude that the main topic of the narration is that to place or introduce the sperm into a place that has been forbidden by Allah the Almighty to use illegitimately will bring about intensified punishment and it is regarded as extremely forbidden.

The second point can be put in the form of the following question: What is the meaning of placing the sperm in a place other than the legitimate one?

The meaning of "*placing the sperm"* is so general that, besides the natural placing of the sperm, it may also include the instances of placing the sperm through adultery, as well as with a tool, a device, or a process of artificial insemination. According to the generality of this meaning, it may be deduced that any form of placing a man's sperm in the uterus of a woman who has no marital relationship with him is forbidden and included in the sense of the narration involved.

In view of these two points, the narration at issue hints at the forbiddance and illegality of the second form of artificial insemination.

## *Discussion of the Argumentation*

In reply to those who draw such a conclusion from the narration, in order to prove the illegality of artificial insemination, two points should be highlighted from the first:

***First Point***: The main topic of the narration is giving reason for the intensification of a punishment related to a juristic and positive issue, showing that the reason for such additional punishment is the commitment of a double offense. So the narration does not allude to a pure duty-related ruling. Given that the current discussion deals with revealing the duty-related ruling of the legality or illegality of artificial insemination, the narration has nothing to do with the topic of this discussion.

***Second Point***: Although the point at issue in this narration was not expressed by such verbs like *aqarra* (introduced into) or

*afragha* (poured in); rather, the verb used in the expression was *waḍa'a* (placed in), the same conclusions mentioned about the two previously cited narrations are applicable here; that is, when a man's sperm is placed in the genital tract of a woman who is not related to him by any of the forms of legitimate relationship between men and women, by means of a device or a medical mechanism, then this process cannot be expressed as introduction of a man's sperm into the genital tract of a marriage-unrelated woman; rather, it must be expressed as follows: Other persons, or a device, performed the process of introducing the sperm into the woman's genital tract.

In view of these two points, the inference of the illegality of the second form of artificial insemination from this narration is problematically incomplete, too.

## *Fourth Narration*

In the main, the three previously cited narrations have been provided by scholars as evidence of the illegality of the second form of artificial insemination, but we have noticed that these narrations do not hold, or incompletely hold, a clear-cut proof of the claimed illegality. However, some other narrations have been cited as indicative of the matter at issue. One of these narrations is the following:

> In his book of *al-Zuhd*, al-Ḥusayn ibn Saʿīd has reported Ṣafwān ibn Yaḥyā, on the authority of Abū-Khālid who

> reported Ḥamzah ibn Ḥamrān to have quoted Abū-ʿAbdullāh (al-Ṣādiq) as saying: A Bedouin came to the Prophet and asked for advice. Giving him advice, the Prophet said, "Guard what lies between your two legs."[1]

Explaining this narration, some scholars maintain that the Holy Prophet's expression of *guarding what lies between the legs* is a metaphor standing for vigilance and caution against committing illegitimate things, especially adultery, by using the organ that lies between the legs.

Holding the same opinion, other scholars argue that the Prophet's instruction of *guarding what lies between the legs* is so general that it includes men who indirectly introduce their sperms into the genital tract of a marriage-unrelated woman via a medical device or tool. They thus decide that one who engages in such a process has in fact not *guarded what lies between his legs*.

In my estimation, inferring such a ruling from the narration is extremely contrived, because the Prophet's instruction "*guard what lies between your two legs*" obviously means to guard against and beware of committing adultery; rather, one must seek legal ways of establishing a relationship between men and women, such as marriage.

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1 Al-Ḥurr al-ʿĀmilī, *Wasā'il al-Shīʿah* 2/356, H. 3.

## *Fifth Narration*

Known by traditionists as ʿAmmār al-Sābāṭī's passably reported narration (*muʿtabar*; a narration that reaches the level of belief in its having been said by the Imam), the following narration has been provided as evidence of the illegality of the second form of artificial insemination:

> ʿAmmār ibn Mūsā is reported to have quoted Imam al-Ṣādiq as saying about the case of a man who copulates with a beast or another one who masturbates: "Whatsoever way a man ejaculates his fluid, be it into a beast or the like things, it is considered fornication."[1]

### *Simplified Explanation of the Argumentation*

In order to conclude that this narration declares the forbiddance of the second form of artificial insemination, it seems necessary to bring up the following two points:

***First Point***: In this narration, the Imam intends to proclaim the duty-related ruling of having sexual intercourse with beasts and masturbation; thus, the Imam's words have nothing to do with the positive and the opinion of the religious law about these two matters as well as the amount of the punishment implicated. In other words, the Imam aims to say that these two offenses are as

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1 Shaykh al-Kulaynī, *al-Kāfī* 5/541, H. 3; al-Ḥurr al-ʿĀmilī, *Wasā'il al-Shīʿah* 20/349, S. 26, H. 1.

grave sins as fornication, but not that the punishment of committing adultery is applied to them.

***Second Point***: The narration generally demonstrates an all-inclusive ruling of the forbiddance of ejaculating the semen via any other means than legal sexual intercourse; therefore, the main topic of this discussion—i.e. artificial insemination—is included with this ruling. In plain words, the ruling declared in this narration includes the following case: If a man ejaculates his semen and gives it to a medical centre in order to be implanted into the uterus of a marriage-unrelated woman, then this case must be treated and decided as adultery.

## *Discussion of the Argumentation*

The ruling of illegality that is claimed as deduced from the narration has to find answers to the following question that represents an instance of semen ejaculation by other means than legal sexual intercourse:

Whenever a man's sperm is introduced into the uterus of another woman via a medical device, apart from the variety of the mechanisms of the process, this must mean that the man's sperm was separated from him. So, is such an act decided as adultery, too?

If, for example, a man had a wet dream (i.e., an erotic dream with an involuntary ejaculation of semen), woke up at that moment of ejaculation, collected his fluid, and gave it to a medical centre of artificial insemination, or ejaculated after

engagement in an act of legitimate sexual intercourse and then gave the fluid to that centre; would such cases be included with the general sense of the narration and decided as adultery?

Obviously, it is extremely improbable to answer in the affirmative depending upon the general sense of the narration. To explain, the Imam's statement: "*Whatsoever way a man ejaculates his fluid, be it into a beast or the like things…*" is said to declare a general rule about the law of semen ejaculation. This rule entails an obligation upon men to ejaculate semen voluntarily and only during a state of intercourse with their legitimate wives; so, it is illegal for them to even masturbate by themselves. However, in instances when a man ejaculates semen after a legitimate sexual intercourse and then gives his semen to be introduced into the uterus of another woman, it is extremely improbable to claim that the illegality mentioned in the narration includes such an act. This is because the narration talks about the illegality of ejaculation without a legal reason, such as having sexual intercourse with a beast, masturbation, sodomy, etc., and it does not include the issue of artificial insemination.

## *Final Conclusion of the Narrations*

In brief, the most important objection that is raised to the drawing of certain conclusions from these narrations is that they do not relate to the area of discussion (i.e., the legality of introducing a man's sperm into the genital tract of a woman who has no marital relationship with him; i.e., artificial

insemination) nor do their general indications include the different instances of it. In other words, we cannot infer from these narrations any general rule stating the forbiddance of introducing a man's sperm into the genital tract of a marriage-unrelated woman apart from the different methods of this process, which some scholars claim to have deduced from these narrations.

In view of this fact, if we doubt whether this process is legal or forbidden, we must apply the general jurisprudential rules (of the initial legality of all things unless the opposite is clearly proven) to the question and decide the legality of artificial insemination in its second form. However, other points of evidence than the aforesaid ones have been provided to prove the illegality of this form. Hence, when these points are proven to be valid and legally binding, only then can we retreat our opinion. On the basis of this fact, we will study the other proofs in the following pages of the book.

## *Second Groups: Qur'ānic Texts*

Scholars who try to prove the illegality of artificial insemination have provided as evidence a number of holy Qur'ānic verses. As a matter of fact, these Qur'ānic verses entail useful, meticulous, and contemplative discussions. In the coming lines, we will try to touch on these discussions, albeit briefly.

## *First Qur'ānic Verse*

The Holy Qur'ān reads,

> "And say to the believing women that they cast down their looks and guard their private parts." (24/31)

## *Simplified Explanation of the Argumentation*

The evidence argued in the verse is this statement: "*...and guard their private parts,*" where the objects against which they should guard their private parts are not specified; therefore, on the basis on the general familiar rule entailing that when an object is not mentioned, the matter commanded must be inclusive to all objects generally, the verse must hold that the believing women are required to guard their private parts against all illegal things, such as looking, touching, and having sexual intercourse with other men than their husbands, etc. In conclusion, this general obligation must include artificial insemination. In other words, the verse holds the sense that women are commanded to guard their private parts against receiving the sperm of other men than their husbands, even if this process is performed via a medical device or mechanism.

## *Critique of the Argumentation*

In fact, this argumentation can be argued from five aspects:

***First Aspect***: The general rule alleged is in fact no more than a claim that is neither founded on a valid statement nor provable;

rather, it is one of a number of familiar baseless sayings. So it can be judged as a sort of an allegation that lacks a clear-cut proof. Actually, this rule is refuted by a large number of examples used in Arabic language.

***Second Aspect***: Whenever we face a statement in which a total ruling is mentioned while the objects thereof are crossed out, it becomes our task to try to find the substance of these objects as well as what is meant by the indications of the text and the backgrounds that traditionally occur to the mind whenever that text is read or heard. This process is done through going into a suitable ground that is generally concluded from the compatibility between the ruling and the subject matter of the case.

Let us cite the following holy verse as example: "*O you who believe! Intoxicants and games of chance and sacrificing to stones set up and dividing by arrows are only uncleanness, Satan's work; shun it therefore that you may be successful.* (5/90)" The indications of this verse require us to believe that it speaks of consuming intoxicants; therefore, the conclusion drawn from the verse is that it orders us to avoid drinking intoxicants.

With regard to the topic under discussion, the indication that fits the ruling and the subject matter of the verse's implication is that what is meant by *guarding the private parts* is to protect them against being touched, seen, or copulated with by anyone other than the legitimate husband. Yet the indication of the

verse does not refer to any generality that includes all sorts of *guarding* just because the object related to the *guarding* is not mentioned in the verse.

In the light of the indication that fits the ruling and the subject matter of the verse's purport, we can conclude that the holy verse points to women's guarding the private parts from being touched, seen, or copulated with by anyone other than their husbands, and like matters. So the verse does not signify a general sense of guarding.

***Third Aspect***: If we concede that this verse holds a general sense indicating that women must guard their private parts against all things, then the duty of women guarding their private parts will include the topic under discussion specifically, adopting the jurisprudential principle of *dependence upon the general sense in dealing with issues whose examples are suspicious*, because when we doubt whether it is obligatory upon women to guard their private parts from receiving the sperm of men other than their husbands, providing as our evidence the general sense of the aforesaid holy verse, then this must mean that we are adopting the principle of dependence upon the general sense in dealing with issues whose examples are suspicious – but this principle has been proven as invalid according to *'ilm al-uṣūl*.

***Fourth Aspect***: Even if we supposedly agree to the claim that the *guarding* mentioned in this holy verse is so general that it includes guarding against all things, we still understand from

the presumption of the context of the verse and the statement preceding it (i.e., "*say to the believing women that they cast down their looks*") that the private parts must be guarded against the others; i.e., women must protect their private parts against men other than their husbands. Of course, this sort of *guarding* generally means that women are obligatorily required not to look at or allow other men than their husbands to copulate with them illegally. Yet instances of women doing anything (other than those included with the illegitimate matters) they want with their own private parts have not been referred to or meant by the holy verse. So, the apparent meaning of the verse has nothing to do with a woman allowing the sperm of a non-husband man to be introduced into her uterus.

***Fifth Aspect***: Through many narrations, the Imam is reported to have specified the meaning of *private parts* mentioned in the holy verse involved. He thus states that whenever this expression is mentioned in the Holy Qur'ān, it refers to *guarding the private parts against adultery*, with the exception of one verse only, which is the one at issue, in which the expression means *guarding the private parts from against being seen*.

Based on this fact, the holy verse involved deems forbidden to women to commit adultery according to the principle of *decisive priority*. However, we are not sure whether the cases of artificial insemination are included with the implication of this holy verse.

To investigate the matter more thoroughly, let us now survey the narrations explaining this holy verse, which have been mentioned in three reference books of *ḥadīth*:

## *First Narration*

Omitting the chain of authority, Shaykh al-Ṣadūq, in *man-lā-yaḥḍaruhu'l-faqīh* (1/114, H. 235), reported the following:

Imam al-Ṣādiq was asked about the meaning of God's saying, "*Say to the believing men that they cast down their looks and guard their private parts. That is purer for them.*" (24/30)

The Imam answered,

> "Whenever the command of *guarding the private parts* is mentioned in the Book of Allah the Almighty, it means guarding them against adultery, except in this verse, which stands for guarding the private parts against being seen."[1]

As maintained by this narration, this holy verse commands women to protect their private parts from being seen by others than their husbands.

We have already proven that the narrations reported by Shaykh al-Ṣadūq without mentioning their chains of authority must be decided as decisively authentic, especially when they begin with such verbs like *qāla* (… said) or *su'ila* (… was asked),

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1 The narration is also mentioned al-Ḥurr al-'Āmilī's *Wasā'il al-Shī'ah* 1/300, S. 1, H. 3.

which entails that Shaykh al-Ṣadūq was sure that these words were said by the Imam. This fact proves that this narration is authentic and can be provided as valid argumentation.

## *Second Narration*

The second narration in this regard has been mentioned by Shaykh al-Kulaynī, in *al-Kāfī* (2/35, H. 1), yet we will hereinafter mention only a part of the narration that is related to the topic under discussion:

*The Imam said*:

> …So, Allah the All-blessed and All-exalted says, "*Say to the believing men that they cast down their looks and guard their private parts*" against looking at their private parts and against letting their brothers-in-faith look at their private parts; rather, they must guard their private parts from being seen. Allah then says, "*And say to the believing women that they cast down their looks and guard their private parts*" from letting one of their sisters-in-faith look at their private parts; rather, they must guard their private parts from being seen.

*The Imam added*:

> Whenever the command of *guarding the private parts* is mentioned in the Qur'ān, it means guarding them against

> adultery, except in this verse, which means guarding them from being seen.[1]

For this narration, Shaykh al-Kulaynī mentioned the following chain of authority: "'*Alī ibn Ibrāhīm has reported on the authority of his father on the authority of Bakr ibn Ṣāliḥ who reported al-Qāsim ibn Burayd as saying: Abū-'Amr al-Zubaydī reported to us that Abū-'Abdullāh (al-Ṣādiq) said*..."

In fact, within this chain of authority, the names of Bakr ibn Ṣāliḥ, who is one of the *weak* (untrustworthy) reporters, and Abū-'Amr al-Zubayrī, who is anonymous among the transmitters of *ḥadīth*, are mentioned. For this reason, the narration is decided as *weak in chain of authority*, as decided by the majority of traditionists.[2]

## *Third Narration*

Explaining the holy verse involved, 'Alī ibn Ibrāhīm, in his book of *tafsīr* (exegesis of the Qur'ān 2/101), has cited the following passably reported tradition of Abū-Baṣīr, which reads:

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1 The narration is also mentioned al-Ḥurr al-'Āmilī's *Wasā'il al-Shī'ah* 15/165, S. 2, H. 1.

2 Muḥammad Bāqir al-Majlisī, *Mir'āt al-'Uqūl* 7/213.

My father reported to me on the authority of Muḥammad ibn Abī-ʿUmayr on the authority of Abū-Baṣīr who quoted Abū-ʿAbdullāh (al-Ṣādiq) as saying,

> "Every verse in the Qur'ān that mentions *guarding the private parts*, means guarding them against adultery, except in this verse, which means guarding them against being seen. So, it is not lawful for a believing man to look at the private parts of his brother-in-faith nor is it lawful for a believing woman to look at the private parts of her sister-in-faith."

According to *Biḥār al-Anwār* (101/33), however, the last paragraph of the narration reads as follows:

> "So it is not lawful for a believing man to look at the private parts of his sister-in-faith, nor is it lawful for a believing woman to look at the private parts of her brother-in-faith."

The main paradox that is proposed against ʿAlī ibn Ibrāhīm's book of *tafsīr* is that it was not he himself who compiled the book; rather, some of his students did, whose names have not been mentioned in reference books of biographies of *ḥadīth* transmitters.

## *Conclusion of the Three Narrations*

Even if we repudiate the two narrations mentioned in *al-Kāfī* and in ʿAlī ibn Ibrāhīm's *tafsīr*, the other one mentioned in

Shaykh al-Ṣadūq's *man-lā-yaḥḍaruhu'l-faqīh* is acceptable enough to prove the point under debate.

Accordingly, the final conclusion drawn from these narrations is the following:

The Qur'ānic command of *guarding their private parts* mentioned in this holy verse specifically stands for guarding them against being seen exclusively, which decisively includes guarding against adultery for the most part. Still, we cannot provide this decisive priority as evidence on the forbiddance of placing a man's sperm into the genital tract of a marriage-unrelated woman.

## *Second Qur'ānic Verse*

In two Qur'ānic chapters; namely, Sūrah al-Mu'minūn (No. 23) and Sūrah al-Maʿārij (No. 70), there is a similar series of three verses that read:

> "… And (those) who guard their private parts, except before their mates or those whom their right hands possess, for they surely are not blameable; but whoever seeks to go beyond that, these are they that exceed the limits." (23/5-7)

This series of verses is composed of two parts: a beginning and an end. Both the beginning and the end of the verses can be provided as evidence to prove the forbiddance of the second form of artificial insemination.

## *Drawing Conclusion from the Beginning of the Verses*

Allah the Almighty says in the starting verse of this series, "... *And (those) who guard their private parts*." Apart from the exclusion mentioned in the second verse, this verse means that the believing men do not allow women who are not related to them by a marital tie to look at or touch their private parts and they do not allow any sort of illegal sexual intercourse with women, considering all such things to be in violation of true faithfulness (since the series of these verses beings with: "*Successful are the faithful believers, who…*").

The objects against which the private parts must be guarded have not been mentioned in these verses; therefore, depending upon the previously mentioned discussion of the aforesaid verse, a general sense can be inferred from the verse as long as the objects against which the private parts must be guarded have not been mentioned. As a result, men are required to guard their private parts against all things that can be understood as objects of guarding the private parts, including the introduction of their sperm via a medical device into the genital tracts of women who are not their legitimate wives.

## *Drawing Conclusion from the End of the Verses*

The third verse of this series reads,

> "Whoever seeks to go beyond that, these are they that exceed the limits."

Unlike the previous verses, which required us to rest on the general rule of *the absence of the object*, which entails that the verse holds a general sense, drawing a conclusion from this holy verse without considering this general rule is the main difference between the two methods of drawing conclusions. In other words, to draw conclusions from the first verses and to draw the same from the last one must not be made by relying on the same method (which entails resting on the general rule of *the absence of the object*).

According to the general sense understood from this verse, it means that whoever seeks to go beyond the legitimate male-female relationships (such as marriage and serfdom), will be decided as unjust and a transgressor.

The major and most important point from which a conclusion can be drawn in this holy verse is the generalization that is recognized from the expression *warā'a dhālika*, meaning *going beyond that*, which means that if men do not guard their private parts, by seeking no way for physical relations with women other than through marriage and serfdom, then they are regarded as transgressors.

It goes without saying that the process of introducing sperm into the genital tract of a marriage-unrelated woman is one of the applicable examples of the Qur'ānic expression: "*Whoever seeks to go beyond that…*"

Another point that can be hit upon in this holy verse is that it makes possible for us to decide a general rule about the guarding of private parts. This general rule can be put in the following form: The legality of employing men's private parts is restricted in Islam to their wives and bondmaids. Therefore, whatever else is possible is illegal and forbidden.

Based on this rule, the illegality of many forms of sexual relationships can be deduced from the holy verse involved, such as sodomy, adultery, lesbianism, masturbation, looking at and touching the private parts of others, etc.

In view of that, the second form of artificial insemination is included with these forbidden forms of sexual relationships. Likewise, the forbiddance of putting one's sperm at the disposal of other persons who intend to introduce it into the genital tract of marriage-unrelated women is also proven through this general rule.

## *Discussion of and Objection to the Argumentation*

To refute argumentatively this way of drawing a conclusion (that of the illegality of the second form of artificial insemination) from the holy verse involved, we will discuss the matter from two aspects:

***First Aspect***: The same objections raised against the conclusion claimed to be drawn from the former verses are applicable to this verse. To explain, supposing that the sperm of a man is introduced into the genital tract of a marriage-unrelated woman

without letting him know, such as if a man had donated his sperm to a laboratory for a scientific purpose, for instance, but his sperm was introduced into the genital tract of another woman without informing him; in such a case, we must not consider that the man had violated the command of guarding the private parts or for any action on his part to have been included within the scope of the command mentioned in the holy verse involved. Thus, such suppositions can be excluded from the command mentioned in the holy verse, which means that the command is not so inclusive that it includes all instances of violating guarding the private parts. However, those who claim otherwise will not agree to such details and exclusions.

In conclusion, the end of the holy verse excludes such instances like unintended introduction of sperm into the genital tract of a marriage-unrelated woman as long as the man's sperm was introduced into that genital tract against his will and without informing him.

***Second Aspect***: Based on the following two points of evidence and the conclusion derived from the context of the verse, we can confirm that the command of guarding the private parts stands for guarding them against adultery. Similarly, the Qur'ānic expression "*going beyond that*" is an indicative of the illegal use of the private parts, which is done through illegitimate sexual intercourse with marriage-unrelated women:

The ***First Evidence*** that is provided to prove that *guarding the private parts* exclusively means to avoid committing adultery is

the context of the series of verses, which excludes wives and bondmaids from the command of guarding the private parts. In other words, one's relationship with one's wife and bondmaid is naturally done through having sexual intercourse with them; therefore, the significance of *going beyond that* must have come to mean illegitimate sexual intercourse.

The ***Second Evidence*** is that, in view of the three narrations mentioned above, we must say that *guarding the private parts* in this series of verses means protecting them against adultery exclusively. To explain: from these three narrations it has been clearly proven that the Qur'ānic expression of *guarding the private parts* stands for protection against adultery whenever it is mentioned in the Holy Qur'ān except for verse no. 31 of Sūrah al-Nūr, where it means protecting the private parts from being seen and touched.

## *Answer to the Claimed Argumentation*

In order to assess the claimed argumentation and to answer to the aforementioned two points of discussion, let us refer to the following points:

***First Point***: Depending upon the last verse in the series of the verses involved, we have so far proven that it is forbidden for men to be a party in the second form of artificial insemination. Can we prove the same for women, too? In other words, does the same verse hold any indication of the forbiddance for

women to allow the introduction of the sperm of a marriage-unrelated man into their genital tracts?

The answer must be as follows:

Based on the general rule stating that all religious duties are common to men and women alike, this portion of the holy verse identifies the ruling appertained to women with regard to this issue; i.e., the verse declares that women are allowed to put their private parts at the disposal of their husbands only, but, if they violate this ruling, then they have committed a forbidden act. As a result, the main topic of our discussion (i.e., the introduction of semen into the genital tract of a marriage-unrelated woman) is included with this ruling, which means that it is forbidden for women to allow the sperm of men other than their husbands to be introduced into their genital tracts.

Consequently, a man who, by way of the second form of artificial insemination, puts his sperm at the disposal of a marriage-unrelated woman through a means other than adultery has in fact committed two unlawful actions; the first is related to him in his capacity as male, and the other is concerning his illegal relationship with the woman who is not his legitimate wife.

Proving the validity of the jurisprudential rule that all religious duties are common to men and women alike, a verse in Sūrah al-Aḥzāb (no. 33) reads,

> "Surely, the men who submit and the women who submit, and the believing men and the believing women… and the men who guard their private parts and the women who guard…" (33/35)

In this holy verse, the command of guarding the private parts has been made incumbent upon men and women in the same way.

On the other hand, if we reject the general principle of the commonness of religious duties to men and women, claiming that the aforesaid Qur'ānic verse is restricted to men only, it is still possible to decide the forbiddance of men's putting their sperms at the disposal of marriage-unrelated women for purpose of artificial insemination, depending upon the previously mentioned discussion of drawing conclusion from the verse involved.

***Second Point***: Some narrations that are reported from the Holy Imams state that, when the Imam was asked to identify the very portion of the Qur'ānic verse that indicates the forbiddance of masturbation, the Imam provided the following portion of the verse as the answer:

> "… But whoever seeks to go beyond that, these are they that exceed the limits."

Let us cite one of these narrations:

> Aḥmad ibn Muḥammad ibn ʿĪsā, in his book of *al-Nawādir*, has reported his father as saying that when Imam

al-Ṣādiq was asked about masturbation, he answered, "It is a grave sin against which Allah has warned in His Book. One who commits so is considered to have had sexual intercourse with himself. If you know what a masturbator does in reality, you will never eat with him."

The asker asked, "O son of Allah's Messenger, please tell me where I can find this forbiddance in the Book of Allah."

The Imam answered, "It is found in Allah's saying, '*... But whoever seeks to go beyond that, these are they that exceed the limits.*' Masturbation is one of the things that are described as '*going beyond that.*'"

The asker further asked, "Which sin is graver than the other; fornication or masturbation?"

The Imam answered, "Masturbation is a grave sin. Although it may be said that some sins are less important than others, the fact is that all sins are grave in the sight of Allah, because they are acts of disobedience to Him. Verily, Allah does not like His servants to commit acts of disobedience to Him. He has warned us against so, because they are of the acts of Satan. Allah has thus said, '*Worship not Satan* (36/60)' He also said, '*Surely, Satan is your enemy; so, take him for an enemy. He only invites his party that they may be inmates of the burning fire*. (35/6)'"…[1]

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1 Al-Ḥurr al-'Āmilī, *Wasā'il al-Shī'ah* 28/364, S. 3, H. 4.

The point of evidence to be inferred from this narration is its first lines, where the asker, having heard the Imam saying that masturbation is a grave sin against which Allah has warned, asked the Imam to point out a Qur'ānic text where masturbation is declared as forbidden. The Imam thus cited the holy verse involved, deciding that masturbation is one of the examples of men's using their private parts with other women than their wives or bondmaids.

Based on the general rule decided by the Imam in the narration, we must regard such forms of sexual intercourse or eroticism like sodomy and masturbation as applicable examples of the Qur'ānic verse, "*...but whoever seeks to go beyond that, these are they that exceed the limits.*" Bearing in mind the general rule of the commonness of religious duties to men and women alike, lesbianism (i.e., female homosexuality) must be decided as illegitimate and as another example included by the holy verse involved.

Hitherto, we can say that the holy verse includes the cases of artificial insemination, based on the previously mentioned discussion of the general rule of commonness of religious duties to men and women alike. This means that women are not allowed to introduce into their genital tracts the sperm of men other than their husbands.

## *More Points about the Narration*

### *Investigating the Narration's Chain of Authority*

In addition to Aḥmad ibn Muḥammad's book *al-Nawādir*, the narration has been recorded in ʿAlī ibn Bābawayh's book *Fiqh al-Riḍā,* from which ʿAllāmah al-Majlisī, in *Biḥār al-Anwār* (101/30, H. 1), and al-Muḥaddith al-Nūrī, in *Mustadrak al-Wasā'il* (14/355, H. 1), copied it in the exact words.

According to *al-Nawādir*, the narration's chain of authority reads: "Aḥmad ibn Muḥammad ibn ʿĪsā has reported his father as saying that when Imam al-Ṣādiq was asked…" Of course, no objection can be raised to the chain of authority of Aḥmad ibn ʿĪsā when he reports from his father; but there is a problem with the omission of the names of the transmitters lying between Muḥammad ibn ʿĪsā and Imam al-Ṣādiq. It is known that Muḥammad ibn ʿĪsā was one of the companions of Imam al-Riḍā and Imam al-Jawād; so, it is impossible that he met Imam al-Ṣādiq in person. Accordingly, this narration must be classified as *marfūʿ* (discontinuous chain of authority),[1] even if

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1 In the terminology of ʿ*ilm al-ḥadīth* (the study of the chains of authority and contexts of the narrations that are reported from the Holy Prophet and Imams), a *marfūʿ* narration implies one of two meanings: (1) one or more reporters are omitted from the beginning or the end of the *sanad* (chain of authority) and there is an indication of this omission; for instance, ʿ*Alī ibn Ibrāhīm has reported from his father who reports Imam al-Ṣādiq through a chain of authorities…* (2) a narration is reported directly from the Imam by omitting the name or

he does not mention the omission of the other transmitters who lie between the Imam and him.

About the acceptability or unacceptability of such narrations, the same discussion that has been previously mentioned about the chainless (*mursal*) narrations is applied here.

Taking into consideration that Aḥmad ibn Muḥammad was one of the companions of Imam al-Riḍā and that this very narration has been reported in the book of *Fiqh al-Riḍā* (i.e. the legal questions answered and presented by Imam al-Riḍā), we can say that this narration could have been quoted from an original source or book, but not orally; therefore, it could be said that the original book from which this narration was quoted is the same book of *Fiqh al-Riḍā*. Depending upon these points, an answer can be given to the objection regarding the discontinuousness of the narration's chain of authority; yet, to some extent.

At any rate, we have to confess that this problem in the narration's chain of authority reduces the value of drawing conclusion from it.

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names of the in-between reporters without making any indication of this direct reporting.

## *The Imam's Providing the General Sense of the Verse as Evidence*

It must be made clear whether the Imam's having provided as evidence the general sense of the verse was a religious command or an indication that the verse is so general in its sense that it includes all such issues like masturbation.

It is noticeably necessary to say that the Imam's providing as evidence the general sense of the verse was not a religious command, even if we overlook the discontinuity of the narration's chain of authority. In other words, even if the Imam did not explain the issue and provide as evidence the verse's general sense, this general sense must have still existed in the mentality of a certain category of addressees. In fact, the Imam's citing the verse as evidence reveals that the sense of the verse is so general that it includes all such instances like masturbation. In other words, the Imam intended to say that even if I do not refer to the verse and even if this narration is originally nonexistent, a little investigation of the matter will definitely reveal that the implication of the verse is so general that it easily states the forbiddance of masturbation. Thus, the Qur'ānic phrase "*...but whoever seeks to go beyond that...*" means that if a man does any sexual action with another woman than his wife, or if a woman puts her private parts at the disposal of another man than her husband, then they must be decided as having committed a forbidden act.

Based on the general sense of the verse, we can state that if a woman introduces a mechanical device into her vagina or satisfies herself sexually, her act will be decided as forbidden as masturbation and self-abuse.

In the coming discussions, we will point out that the contemporary issue of womb hiring (i.e. hiring out another woman's womb) and the issue of women putting their wombs at the disposal of other persons for purpose of bearing the foetus of other men than their husbands are examples included with the general sense of this verse; therefore, these issues are decided as forbidden.

## *"Seeking to Go beyond That" is Contingent upon the Two Parties' Indulgence*

It may be said that in view of the beginning of the verse, we can understand that the expression '*whoever seeks to go beyond that*" cannot be materialized unless the two parties take pleasure in their private parts alike; therefore, the command derived from this expression does not include instances of men taking pleasure in their own private parts or women taking pleasure in their own private parts.

To answer, we have to say that this understanding may be true, but a little deliberation on the process makes us notice that a man or a woman, while playing with his or her own private parts, behaves imaginably as if the other sex is taking part in that process of eroticism. As a result, a woman who stimulates

her genitals manually or by using a special device is in fact engaged in a two-party stimulation of the genitals for having sexual pleasure, yet presumptively. The evidence on this claim is that the Imam, in this narration and many others, describes one who masturbates as if he is having sexual intercourse with himself.

In this regard, it is reported that the Imam's answer to him who asked him about masturbation was as follows: "He is having sexual intercourse with himself…"[1]

## *Conclusion*

Even if we agree that the narration's chain of authority is discontinuous and thus too weak to be accepted, the last phrase of the verse involved—if we consider it alone—is still carrying a general sense that includes all instances of violating the guarding of private parts. According to the principles of Muslim jurisprudence, the initial presumption of generality of senses (*aṣālat al-iṭlāq*) is one of the proofs of a text's provability, which is mainly derived from reason-based evidence. Besides, the religious legislation does not hold any indication contrary to the reason-based evidence. Consequently, the general sense of the verse can be acceptably taken as evidence on the forbiddance of the second form of artificial insemination.

1 Shaykh al-Kulaynī, *al-Kāfī* 5/560, H. 2.

### *Summary*

There is no objection to providing evidence from the last phrase of the verse on the forbiddance of the second form of artificial insemination; so, the inference of forbiddance from the verse is decided as completely acceptable.

## *Third Verse*

The Holy Qur'ān reads,

> "Prohibited to you (for marriage) are: your mothers, daughters, sisters; father's sisters, Mother's sisters; brother's daughters, sister's daughters; foster-mothers (who gave you suck), foster-sisters; your wives' mothers; your step-daughters under your guardianship, born of your wives to whom ye have gone in,- no prohibition if ye have not gone in;- (those who have been) wives of your sons proceeding from your loins; and two sisters in wedlock at one and the same time, except for what is past; for Allah is Oft-forgiving, Most Merciful." (4/23)

The holy verse names a number of women whom are forbidden for marriage to men.

### *Simplified Explanation of the Argumentation*

It is noteworthy that the holy verse does not imply the very action that is forbidden to men to do with these women. It is however known to everybody that all religious prohibitions are

related to actions. With regard to the prohibition mentioned in this verse, it must be understood that these women in themselves are not forbidden to men; rather, what is forbidden is to do a certain action to them; therefore, we must decide that the action forbidden to men in this verse should be figured out from the verse's context. Relying on the general rule—which is decided as one of the principles of Muslim jurisprudence—stating that omission of the action indicates generality (i.e. when a certain thing is decided by religious texts as forbidden, this must mean that all actions related to this thing are forbidden), we must decide that all actions that are done with these categories of women are forbidden to men. The result is that the second form of artificial insemination (i.e. introducing a man's sperm into the genital tract of a marriage-unrelated woman such as mothers, sisters, etc.) must be included with these forbidden actions and must thus be decided as illegal. In other words, as the holy verse decides that mothers, sisters, etc. are forbidden to men, one of the forbidden actions to be committed against these categories of women must be the introduction of sperm into their genital tracts.

Scholars who decide as legal the second form of artificial insemination seem to make no difference between the categories of the marriage-unrelated women, which entails, according to these scholars, that any woman who is not the legitimate wife of a man, is allowed to accept that the semen of that man is introduced into her genital tract, be she married or unmarried, or consanguineous (i.e., related by descent) or not.

On the other hand, scholars who decide as illegal the second form of artificial insemination argue that if they deem as legal this method, then they must deem as legal the artificial introduction of semen into the genital tract of the mother or sister of the owner of the semen, which is consequently in violation of the general sense of the holy verse, which decides actions like these as forbidden to men with regard to these categories of women.

## *Objection to the Argumentation*

Two objections can be raised against this method of inferring evidence of the illegality of the second form of artificial insemination from the holy verse involved:

***First Objection***: The same discussion that has been previously said about the general rule stating that *omission of the action indicates generality* can be applied here. In other words, although this general rule is familiar among scholars, it lacks any practical origin; therefore, it cannot be taken for granted.

As we object to the opinion that the holy verse holds a general forbiddance which includes all actions, we, by applying a supposition derived from the compatibility of the ruling and the subject matter of the case, can assume that the forbiddance mentioned in the verse is restricted to marriage and marital issues exclusively, especially when we take into consideration the fact that the end of the verse warns against combining two sisters together in marriage. This is of course a point that clearly

shows that the verse talks about marriage and nothing else. Thus, we can understand that the whole verse talks about the forbiddance of marrying these categories of women.

***Second Objection***: The verses that come before and after this holy verse unmistakably bear out that the forbiddance mentioned in the verse is restricted to marriage. As for the verse that comes after this one, it reads,

> "Also (prohibited are) women already married, except those whom your right hands possess. Thus has Allah ordained (prohibitions) against you. Except for these, all others are lawful, provided you seek (them in marriage) with gifts from your property,- desiring chastity, not lust, seeing that you derive benefit from them, give them their dowers (at least) as prescribed; but if, after a dower is prescribed, agree mutually (to vary it), there is no blame on you, and Allah is All-knowing, All-wise." (4/24)

This holy verse holds a prohibition of marrying women who are currently married. It then states that it is legal for men to marry all other women except the ones who are mentioned. This evidently shows that these verses talk about marriage and specify the categories of women that are forbidden for marriage to men.

## *Fourth Verse*

The Holy Qur'ān reads,

> "Surely, as for the Muslim men and the Muslim women; and the believing men and the believing women; and the obeying men and the obeying women; and the truthful men and the truthful women; and the patient men and the patient women; and the humble men and the humble women; and the almsgiving men and the almsgiving women; and the fasting men and the fasting women; and the men who guard their private parts and the women who guard; and the men who remember Allah much and the women who remember; Allah has prepared for them forgiveness and a mighty reward." (33/35)

The same words that have been mentioned about the second verse are applicable here; that is, the holy verse holds the following general rule: It is obligatory upon men and women to guard their private parts against all sexual relationships except the legitimate ones. For men, it is legal for them to *use* their private parts with their wives and bondmaids. For women, it is legal for them to *use* their private parts with their husbands and none else.

This point has been mentioned by a number of exegetes of the Holy Qur'ān, such as al-Jaṣṣāṣ (in *Aḥkām al-Qur'ān* 3/47) and Ibn Kathīr (in *Tafsīr al-Qur'ān al-ʿAẓīm* 3/296). Shaykh al-Ṭūsī (in *al-Tibyān fī Tafsīr al-Qur'ān* 8/431-2) has also mentioned similar words.

According to the general implication of the verse, the forbiddance mentioned therein must include such instances like

the artificial introduction of a man's sperm into the genital tract of a woman other than his wife.

### *Objection to the Argumentation*

This argumentative inference of the forbiddance of artificial insemination from the holy verse could be utterly true if there were not the narrations (some of which have been already cited in this book) that specified the meaning of *guarding the private parts* to adultery. So, in view of the existence of such narrations, it becomes unfeasible to generalize the purport of the holy verse and apply it to the question at issue; i.e., the second form of artificial insemination.

## *Final Conclusion*

The final result that can be concluded from these four Qur'ānic verses as well as the related narrations can be summed up in the following two points:

1. By no means could we infer the forbiddance of the second form of artificial insemination from these Qur'ānic verses.

2. None of the four previously mentioned Qur'ānic verses holds a clear-cut proof of the forbiddance of the second form of artificial insemination. However, verse no. 7 of Sūrah al-Mu'minūn, which reads, "*...but whoever seeks to go beyond that, these are they that exceed the limits,*" can be possibly provided as evidence on the forbiddance.

## *Third Group: Narrations about the Logic for Religious Laws*

Among the other points that have been provided as evidence on the forbiddance of the second form of artificial insemination are some narrations that have been reported to clarify some logic for the enactment of certain religious duties and prohibitions. One of the narrations about the logic for the prohibition of adultery is the following one, which has been reported without its chain of authority by Shaykh al-Ṣadūq in his book: *man-lā-yaḥḍaruhu'l-faqīh* (3/565, H. 4934).[1] In this narration, Imam al-Riḍā answers a variety of questions that were posed by Muḥammad ibn Sinān. However, the following portion of the narration is related to the topic under discussion:

Imam al-Riḍā said,

> "Allah the All-exalted has forbidden adultery, because it holds corruption, such as killing of souls, waste of lineages, abandonment of children rearing, and violation of the inheritances, as well as other similar sorts of corruption."

The *killing of souls* mentioned in the narration probably reveals the fact that the adulterer wastes his semen, leading to the waste

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1 Shaykh al-Ṣadūq, *'Ilal al-Sharā'i'* 2/479, S. 229, H. 1; al-Ḥurr al-'Āmilī's *Wasā'il al-Shī'ah* 20/311, S. 1, H. 15.

of procreation. It may also refer to the fact that adultery leads to pregnancy, in which case the woman might abort the foetus and kill it.

The *waste of lineages* means that adultery, and the woman's failure to relate legitimately to one husband only, result in the real father of the child born illegitimately being unknown.

## *Simplified Explanation of the Argumentation*

The same consequences and corruptions that result from adultery may be applicable to the process of artificial insemination in its second form, especially when we take into consideration the fact that sperm donations stored in sperm banks, as have been established in some countries, are stored so randomly that it cannot be known who the owner of any specific contribution of sperm is. Consequently, lineages will be wasted, causing confusion to the laws of inheritances, as well as many other mischievous results leading to the collapse of the family structure and the violation of many divine laws.

In view of these consequences as well as the narrations that mention the logic for the forbiddance of adultery, the second form of artificial insemination must be decided as forbidden and illegal.

## *Objection to the Argumentation*

In this regard, we will discuss the matter from two aspects only:

## *First Aspect: Investigating the Narration's Chain of Authority*

This narration has been recorded in *man-lā-yaḥḍaruhu'l-faqīh* without mentioning its chain of authority. In the appendix (*mashyakhah*) of the book (4/523), Shaykh al-Ṣadūq writes down:

> "Whatever narration mentioned in this book and reported from Muḥammad ibn Sinān has been reported to me from Muḥammad ibn ʿAlī Mājīlawayh, from his uncle Muḥammad ibn al-Qāsim, from Muḥammad ibn ʿAlī al-Kūfī, from Muḥammad ibn Sinān… and I reported it from my father, from ʿAlī ibn Ibrāhīm, from Muḥammad ibn Sinān."

The first chain of authority that takes to Muḥammad ibn Sinān is weak (i.e. contestable), because it contains Muḥammad ibn ʿAlī al-Kūfī Abū-Samīnah al-Ṣayrafī, unlike the second chain, which is acceptably provable.

The narration's chain of authority mentioned in Shaykh al-Ṣadūq's ʿ*Ilal al-Sharā'i*ʿ is as follows:

> "ʿAlī ibn Muḥammad reported to us, saying: Muḥammad ibn Abī-ʿAbdullāh has reported to us from Muḥammad ibn Ismāʿīl ibn ʿAlī ibn al-ʿAbbās, from al-Qāsim ibn al-Rabīʿ al-Ṣaḥḥāf, from Muḥammad ibn Sinān…"

There are, however, two probabilities about the validity or invalidity of the narration's chain of authority. The first

probability is that the narration's chain of authority mentioned in *man-lā-yaḥḍaruhu'l-faqīh* could be the same as the one mentioned in *'Ilal al-Sharā'i'*. The second probability is that this chain of authority could be the same as one of the two chains of authority mentioned in the appendix of *man-lā-yaḥḍaruhu'l-faqīh* (*mashyakhah*).

Whatever the case may be, the narration's chain of authority contains the names of untrustworthy and weak transmitters of narrations, except the one reported by the author from 'Alī ibn Ibrāhīm.

Moreover, biographers of the transmitters of *ḥadīth* have had different opinions about the trustworthiness of Muḥammad ibn Sinān himself; therefore, we will overlook all other aspects and concentrate on investigating the manner of Muḥammad ibn Sinān with regard to his transmission of traditions from the Imams.

In fact, Muḥammad ibn Sinān is one of the reporters whom have been decided as trustworthy by some master scholars of biography and as untrustworthy by others. For instance, al-Kashī, al-Najjāshī, and 'Allāmah al-Ḥillī have regarded him as weak (i.e., untrustworthy).[1]

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1 See al-Kashī, *Ikhtiyār Ma'rifat al-Rijāl*, pp. 326, No. 729; al-Najjāshī, *al-Rijāl*, pp. 328, No. 888; 'Allāmah al-Ḥillī, *Khulāṣat al-Aqwāl*, pp. 251, No. 17.

As for Shaykh al-Ṭūsī, he introduces Muḥammad ibn Sinān as follows:

> "His trustworthiness has been questioned, and he has been regarded as a weak reporter."[1]

On the other hand, a number of proofs on the trustworthiness of Muḥammad ibn Sinān has been cited:

***First Proof***: Through a genuine chain of authority, Imam al-Bāqir is reported to have said,

> "May Allah reward Ṣafwān ibn Yaḥyā, Muḥammad ibn Sinān, and Zakariyyā ibn Ādam well on behalf of me, for they have been loyal to me."[2]

***Second Proof***: A number of decent and trustworthy reporters have reported narrations from Muḥammad ibn Sinān; such as Ḥusayn ibn Saʿīd al-Ahwāzī and his brother Ḥasan, al-Faḍl ibn Shādhān, Ayyūb ibn Nūḥ, Muḥammad ibn al-Ḥusayn ibn Abi'l-Khaṭṭāb, and Aḥmad ibn Muḥammad ibn ʿĪsā al-Ashʿarī.

***Third Proof***: Shaykh al-Ṭūsī, in *Kitāb al-Ghaybah*, has put the name of Muḥammad ibn Sinān in the list of the praised persons, even though he has decided him as weak in reporting traditions in his books: *al-Fihrist*, *al-Rijāl*, *Tahdhīb al-Aḥkām*, and *al-Istibṣār*.

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1 Shaykh al-Ṭūsī, *al-Fihrist*, pp. 143, No. 609.

2 ʿAllāmah al-Ḥillī, *Khulāṣat al-Aqwāl*, pp. 189, No. 22.

***Fourth Proof***: Some scholars have concluded the trustworthiness of Muḥammad ibn Sinān from the following paragraph of Shaykh al-Mufīd mentioned in *Kitāb al-Irshād* 2/247:

> "Among the elite, loyal, and trusted persons by Imam al-Riḍā who were known for their piety, knowledgeability, and scholarship in jurisprudence and who reported that Imam al-Riḍā was appointed by his father as the next Imam are Dāwūd al-Raqqī... and Muḥammad ibn Sinān."

Another proof of the trustworthiness of Muḥammad ibn Sinān is that Ibn Qawlawayh, in his book of *Kāmil al-Ziyārāt* (S. 1, pp. 11), reported a narration from him. Besides, Shaykh al-Ḥurr al-ʿĀmilī (the compiler of *Wasā'il al-Shīʿah*) and Sayyid Ibn Ṭāwūs (in *Muntahā al-Maqāl* 6/56) have decided him as a trustworthy reporter.

In view of these proofs, we conclude that Muḥammad ibn Sinān as a reporter has been both criticized by some and deemed trustworthy by others. In such cases, master scholars of the biography of reporters (*dirāyah*) have had five different opinions. One of these opinions, which is the most suitable in such cases like the current one, holds that when two views about a reporter are contrary to each other, both of them must be regarded as void and, as a result, that reporter must be treated just like any other reporter about whose trustworthiness no criticism was raised. The same rule is applied to the chain of authority that contains a weak reporter.

It is worth mentioning that the general principle of non-restriction with regards to the recommended traditions (*al-tasāmuḥ fi adillat al-sunan*)[1] cannot be applied to the traditions about the logics for the religious duties and prohibitions, because some general rulings are derived from these traditions, while this is in violation of the principle of non-restriction with regards to recommended traditions.

## *Second Aspect: Investigating the Narration's Implication*

Two argumentative objections are raised against the sense of the narration; each of which is aimed for refuting the claim that the narration holds decisive evidence on the forbiddance of the second form of artificial insemination.

***First Objection***: Aside from the narration's chain of authority, if we suppose that the narration is authentic, we still wonder whether it is about explaining the cause or the logic for the forbiddance of adultery.

It is, however, possible to say that the common sense of the narration's context is to show the logic, but not the cause, for the forbiddance of adultery; therefore, the narration's sense cannot be generalized to other subjects and issues than adultery.

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1 *Al-tasāmuḥ fi adillat al-sunan* is a principle within the principles of jurisprudence entailing the inclusion of a certain state with a common ruling even if this state has not been proven as belonging to it.

Of course, to prove so, we have to investigate the difference between *cause* and *logic* for the religious laws.

## *The Difference between Cause and Logic for the Enactment of Laws*

By the cause (*'illah*) for enacting a law, we mean the point upon the existence of which the law is conditional, while the law is considered to be cancelled when this point is absent. In other words, a law is running when a certain point is existent, and vice versa.

By the logic (*ḥikmah*) for a law, we mean the point that refers to the nature and necessity of enacting that law, but it does not impose the enacting of that law. The point that necessitates the obligation of forbiddance of an act comes to pass by the logic for the law, which is not sufficient in validating that law, since there must exist other peculiar points. In other words, the cause for a law must be considered in order to realize the subject matter of the law, while the logic for the same law has nothing to do with its effectuation.

To explain, let us cite an example:

If we consider the act of intoxicating oneself to be the cause for the forbiddance of drinking alcoholic beverages, then every intoxicating beverage must be forbidden, while the act of intoxicating oneself becomes a part of the subject matter (of the forbiddance of drinking alcoholic beverages). On the other hand, when we consider the Qur'ānic statement, "*Prayer*

*restrains from shameful and unjust deeds*," we cannot decide that the restraining from shameful and unjust deeds to be the cause or a part of the subject matter of this statement, because the core of the obligation mentioned in this statement has to do with the prayer alone, but not to the prayer that restrains from shameful and unjust deeds.

By applying this concept to the issue under discussion, we say that whenever a certain thing plays the role of the cause for enacting a law, the result becomes that whenever this thing exists, the law becomes bindingly effective, although we can consider further things than specifically the subject matter of the law. Conversely, whenever a certain thing represents the logic for the enactment of a law, then this law cannot be applied to other subjects that hold the same logic.

Thus, the points mentioned by the Imam in the narration involved represent an explanation of the logic, but not the cause, for the forbiddance of adultery; it is therefore unfeasible to generalize this forbiddance to other subjects like artificial insemination, even if these points actually exist in it (i.e., artificial insemination).

## *Answer to the Objection*

Although there is no objection to the difference between the cause and the logic for enacting a law, there is still an important point to be made clear. As for the cause, whenever it exists, the law must be bindingly effective, but, if it does not exist, then

the law is put out of action. As for the logic, it is unacceptable to say that, whenever the logic for a law is absent, the law must be considered annulled. In fact, there is no such inseparability between the absence of the logic and the annulment of the law, since it frequently happens that there is a law without logic for its enactment. However, if there is logic for a certain point, there must exist a law to manage it.

Concerning the topic at issue, the logic for the forbiddance of adultery is the waste of lineages and the violation of inheritances. These two points are actually existent in the artificial insemination; therefore, we can say that whenever such points exist, they must be taken as source, cause, and proof of the forbiddance.

***Second Objection***: The narration has presented a number of points as the cause of the forbiddance of adultery; therefore, it is impractical to regard them as the cause for the forbiddance, because the cause for one effect must be one, too. A general logical rule states that it is impossible for one effect to have more than one cause. Thus, the result is that the points mentioned in the narration were examples of applied logic for the forbiddance of adultery, but not causes. They must then be treated as examples of applied logic and submitted to the rules of logic.

## *Answer to the Objection*

We can suppose a common feature to these points, namely, corruption. In other words, the whole question can be put in the following sentence: Allah has forbidden adultery because it holds corruption; and this corruption concerns family and lineage affairs, especially when we suppose a context of compatibility between the law and the subject matter of the case. Besides, there are various sorts of such corruption, one of which is the waste of lineages and the other is the violation of the laws of inheritance.

In fact, this supposition can be proven from some texts of the narration itself. In the beginning of the narration, the Imam says, "*Allah the All-exalted has forbidden adultery, because it holds corruption…*" At the end of the narration, the Imam, having mentioned a number of examples of corruption that result from adultery, generalizes the matter by saying, "*…as well as other similar sorts of corruption.*"

Thus, we can add more sorts of corruption other than those mentioned in the narration.

By virtue of this supposition, the narration refers to the cause, but not the logic, for the forbiddance of adultery; and this cause is that adultery spreads corruption and creates disorder in the family structure and laws.

This very cause is actually existent in the second form of artificial insemination; therefore, we can decide this method as forbidden.

## Second View: Legality of the Second Form of Artificial Insemination

Opposite to the first view of the illegality of the second form of artificial insemination, which I support, there is another view deeming legal this form of artificial insemination. The most important evidence that is provided by scholars who adopt this view is a couple of narrations that we will hereinafter investigate.

Before indulging in this investigation, I would like to mention that there are five narrations in this regard mentioned in *Wasā'il al-Shī'ah*, Part II, Section 3: The Punishment of Lesbianism and Panderism[1]. However, a careful investigation of the chains of authority and implications of these five narrations shows that the second, fourth, and fifth narrations are in fact one narration only, while the first and second narrations are in fact one narration only. Accordingly, we will make our discussion of this view concentrate on two narrations only out of the five actually cited.

[1] According to the Free Dictionary –online- it is the action of soliciting customers for a prostitute or of procuring women for sexual purposes.

## *First Narration*

This narration has been reported by Shaykh al-Ṭūsī in *Tahdhīb al-Aḥkām*, Shaykh al-Kulaynī in *al-Kāfī* and Shaykh al-Ṣadūq in *man-lā-yaḥḍaruhu'l-faqīh*. Although the narration's chain of authority is different from one book to another, the content is almost the same in all of these books. According to *Tahdhīb al-Aḥkām* (10/59, H. 6), the narration reads as follows:

> Muḥammad ibn ʿAlī ibn Maḥbūb has reported from Aḥmad ibn Muḥammad, from al-ʿAbbās ibn Mūsā, from Yūnus ibn ʿAbd al-Raḥmān, from Isḥāq ibn ʿAmmār, from al-Muʿallā ibn Khunays who said: I asked Abū-ʿAbdullāh (al-Ṣādiq) to declare the ruling in the case of a woman who, having been copulated with by her husband, transferred her husband's semen to a virgin bondmaid, who was thus impregnated by that semen.
>
> The Imam answered, "The baby must be declared as the legitimate son of the man (i.e., the owner of the semen), the woman must be sentenced to stoning, and the bondmaid must be punished for committing lesbianism."[1]

## *Investigating the Narration's Chain of Authority*

With regard to its chain of authority, this narration can be decided as acceptable, since there is no objection to the reports of Isḥāq ibn ʿAmmār, Yūnus ibn ʿAbd al-Raḥmān, and ʿAbbās

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1 Al-Ḥurr al-ʿĀmilī's *Wasā'il al-Shīʿah* 28/169, S. 3, H. 4.

ibn Mūsā. However, the problem lies with al-Muʿallā ibn Khunays about whom the scholars of biography have had different opinions. However, the narrations that praised this man are more than those which reported the opposite. Although several master scholars of biography, such as al-Najjāshī,[1] have decided al-Muʿallā is weak in reporting narrations, the majority have regarded him as trustworthy.

## *Discussing the Argumentation from the Narration*

Those who advance this narration as their evidence on the legality of the second form of artificial insemination say: Although the Imam, according to the narration, mentioned all the verdicts related to the parties of the issue, he did not refer to the verdict related to the issue of introducing the man's sperm into the bondmaid's genital tract. This point shows that, if the introduction of a man's sperm into a marriage-unrelated woman's genital tract had been forbidden, the Imam must have declared that the man's wife (who introduced her husband's sperm into the bondmaid's genital tract) should be sentenced to disciplinary punishment (*taʿzīr*) besides the stoning punishment. In fact, the Imam did not make any reference to this point.

In plainer words, those who present argumentation from this narration to prove the forbiddance of artificial insemination in its second form are trying to employ and make use of the general sense of the Imam's words in order to prove their claim.

1 Al-Najjāshī, *al-Rijāl*, pp. 417, No. 1114.

They thus argue that when this case was posed before Imam al-Ṣādiq, the asker only wanted to know three things specifically, because these three things were the essence of the case, while all other related issues were not important. These three things were: the legitimacy or illegitimacy of the foetus, the punishment that must be executed on the man's wife, and the punishment on the bondmaid who received the man's sperm indirectly.

Yet again we must say that, if the process of introducing a sperm into the genital tract of an unrelated woman had been originally forbidden, the Imam must have decided that the man's wife should first be sentenced to disciplinary punishment and then to the stoning punishment.

Based on this discussion, we conclude that the second form of artificial insemination is not forbidden; rather, that it is legally permissible.

## *Objection to the Argumentation*

However, a number of objections can be raised against this method of presentation of argument from the narration in order to prove the legality of artificial insemination in its second form:

***First Objection***: The religious punishment of discipline (*ta'zīr*) is executable only when a person commits a certain action deliberately and knowingly (i.e., he or she knew that this action was in violation of the religious law). With regard to the case

mentioned in the narration, the crime of lesbianism was committed on purpose; therefore, the Imam decided that the woman should be stoned and the bondmaid should be sentenced to the punishment of lesbianism. The transference of the man's sperm from his wife to the bondmaid's genital tract was not made on purpose; rather, unwillingly; therefore, the disciplinary punishment must not be decided in this case.

***Second Objection***: In chapters of penal laws and disciplinary punishments in the books of Muslim jurisprudence, a number of jurisprudents agree that the disciplinary punishments are executed to persons who commit major sins only, while these punishments must not be applied to cases of minor sins. With regard to the question under consideration, the woman who introduced her husband's sperm into the genital tract of another woman at least had no knowledge that such a sin was one of the major ones, not to mention that she transferred that sperm unwittingly and that she only thought that she would commit the sin of lesbianism.

***Third Objection***: The narration does not mention whether the bondmaid was owned by the woman's husband; if she was his bondmaid, then the introduction of his sperm into her genital tract was originally legal. In other words, if the bondmaid was owned by the woman's husband, then there would be no difference between her genital tract and the genital tract of the man's wife with regard to religious law. Such being the case, we cannot decide that the man's sperm was introduced into the

genital tract of a woman who was not related to him by a legal marriage relationship.

A third form of artificial insemination, which will be discussed in detail later in this book, is done by way of inseminating the wife's ovum with the husband's sperm, and the outcome being then transferred to a second woman's uterus for growing. With regard to this form, the narration involved has nothing to do with the second form of artificial insemination, which is currently under discussion.

However, we have to note that there is no reference in the narration that enables us to decide whether the bondmaid was owned by the owner of the sperm or by another man.

In conclusion, in view of the aforesaid objections, to decide the legality of the second form of artificial insemination by reliance upon the narration involved is neither complete nor acceptable.

## *Second Narration*

The following narration has come as the third one under the third part of Section: The Punishment of Lesbianism and Panderism. Yet it holds the same content of the first narration. It is, however, necessary to quote the narration's chain of authority as recorded in Shaykh al-Kulaynī's *al-Kāfī* (7/202):

> Muḥammad ibn Yaʿqūb: A number of our acquaintances have reported from Aḥmad ibn Muḥammad ibn Khālid,

> from ʿAmr ibn ʿUthmān, from his father, all of whom have reported Hārūn ibn al-Jahm, from Muḥammad ibn Muslim who said that he heard Abū-Jaʿfar (al-Bāqir) and Abū-ʿAbdullāh (al-Ṣādiq) saying…"

As for Shaykh al-Ṭūsī's *Tahdhīb al-Aḥkām* (10/58), the narration's chain of authority reads:

> "By way of the author's narration from Muḥammad ibn ʿAlī ibn Maḥbūb, from Muḥammad ibn al-Ḥusayn, from Ibrāhīm ibn ʿUqbah, from ʿAmr ibn ʿUthmān who reported Abū-ʿAbdullāh (al-Ṣādiq) as saying…"

Noticeably, although the two narrations hold the same content, they differ in the chain of authority. Let us now quote the narration as it is recorded in *Tahdhīb al-Aḥkām*:

> One day, a group of people came to Amīr al-Mu'minīn (ʿAlī ibn Abī-Ṭālib) asking for a verdict about a certain case, but could not find him. Al-Ḥasan, his son, asked them, "You may present your question to me. If I answer you correctly, then this will be guidance of Allah and Amīr al-Mu'minīn; otherwise, you may refer to Amīr al-Mu'minīn." Presenting their problem, they said, "A woman, who had just had sexual intercourse with her husband, left him and immediately committed lesbianism with a virgin bondmaid, introducing her husband's sperm into the bondmaid's vagina and causing her to be pregnant."

Imam al-Ḥasan at once answered, "The wife must undergo the dowry of that virgin bondmaid, because she would not be able to give birth to the child unless she would first be deprived of her virginity. After she gives birth to the child, the punishment (of lesbianism) must be executed upon her. The child must be decided as the legitimate son of the owner of the sperm. As for his wife, she must be sentenced to the punishment of stoning."

Having received this verdict from Imam al-Ḥasan, these people left him and met Amīr al-Mu'minīn on their way. When they informed him of the details, Amīr al-Mu'minīn said, "By Allah, if you had first met Amīr al-Mu'minīn, he would not give you a single word more than what al-Ḥasan had said to you."[1]

## *Discussing the Argumentation from the Narration*

The same previously mentioned objections are applied to this argumentation; therefore, the proofs that are claimed to be inferred from this narration by those who believe in the legality of the second form of artificial insemination must be decided as invalid and worthless.

1 Al-Ḥurr al-'Āmilī, *Wasā'il al-Shī'ah* 28/169, S. 3, H. 3.

# Third Form: Artificial Insemination between a marriage-unrelated man and woman

This form is suggested when the problem of inability of sexual reproduction lies with the female; i.e., when the wife's reproductive system is unable to ovulate; therefore, her husband's sperm is used to inseminate the ovum of another woman.

## *What is the Difference Between this Form and the Previous One?*

We have previously mentioned that the common feature between this form and the previous one is that in both forms, a man's sperm is inseminated with the ovum of a woman who is not related to him (with regards to marital relationships). However, there are two reasons that have made us study this form and the rulings appertained to it independently:

***First Reason***: In the second form of artificial insemination, the problem of the inability to have children lies with the male, while in this form the problem lies with the female. As a result, the foetus that is created as a result of the operation of the second form of artificial insemination is legally ascribed to the wife (i.e., the man's wife is the legitimate mother of the foetus), but in this, the third form, it is ascribed to the owner of the sperm. Of course, this difference results in a number of laws

pertaining to the rights of the parents and the child. These laws will be cited in details in the coming chapter.

***Second Reason***: The states and probabilities that are assumed from the third form cannot be presumed in the second form. The reason for such difference in the states and probabilities, of course, pertains to the party who is unable to have children naturally (i.e., the husband in the second form, and the wife in the third). Let us now repeat these states and probabilities, as was originally done at the beginning of the book:

1. Performing the insemination by the husband's semen of the ovum of another woman inside the genital tract of the husband's wife.

2. Performing the insemination by the husband's semen of the ovum of another woman inside the genital tract of that woman.

3. Performing the insemination outside any body; i.e., neither in the genital tract of the wife (of the owner of the semen) nor in the genital tract of the marriage-unrelated woman.

In view of state no. 2, this form of artificial insemination is similar to the second form, but in consideration of the states No. 1 and 3, there is a difference between the two forms; therefore, the coming discussion will be focused on states no. 1 and 3.

## *A Jurisprudential Study of State No. 1*

The first state assumes that the wife is unable to produce sound ova; therefore, an ovum is taken from another woman and injected into the wife's genital tract. Then, the husband copulates with his wife in order to impregnate her. In fact, this assumption is more general than the donor of the ovum's being another wife or a bondmaid of the man, or that there is no marital relationship between that man and her.

Thus, the following question comes: Is such a form of insemination legal according to the Islamic law?

The answer to this question has come in different ways:

***First Answer: General Legality of this form of insemination***

A number of scholars of Muslim jurisprudence believe that such a form of insemination is legal, no matter in what state it may come; e.g., whether the donor of the ovum is another wife of the man or is not related to him by any legal marital relationship. Furthermore, these scholars are subdivided into two categories:

***The first category*** includes the scholars who decide as legal the second form of artificial insemination. Of course, as long as they deem legal that form, they naturally consider this form to be legal, too.

***The second category*** includes some scholars who decide as forbidden the second form of artificial insemination, but they deem probable the legality of this form specifically.

***Second Answer:*** This form is legal, provided that the donor of the ovum is another other wife of the man (i.e., the owner of the semen).

***Third Answer***: This form of insemination is forbidden, without any exception.

In my conception, this answer is the most accurate in view of the proofs and arguments that will be cited in this book later on.

## *Grounds of the Illegality of this Form of Artificial Insemination*

In our previous explanation of the proofs of the forbiddance of the second form of artificial insemination, we have clarified that this form is included with the law inferred from the Qur'ānic verse: "*Whoever seeks to go beyond that, these are they that exceed the limits*." In the same way, the third form at issue must be included with the same law. To explain, we have mentioned there that the general sense of the holy verse entails that the private parts of a husband and his wife are legal to each other only. So, just as it is forbidden for a husband to introduce his sperm into the genital tract of any woman other than his wife via any means including that of artificial insemination, so also it is forbidden for a wife to put into her genital tract the sperm of any other man than her husband. Likewise, it is illegal for any woman to put into her genital tract the ovum of any other woman than herself.

## *Grounds of the Conditional Legality of this Form of Artificial Insemination*

Those who adopt this opinion give the ruling that this form of artificial insemination is legal only when the donor of the ovum is a legitimate wife of the owner of the sperm.

As has been previously said, one of the states of the third form of artificial insemination is that the two women (i.e., the woman into whose genital tract the ovum will be introduced and the donor of the ovum) are legitimate wives of the owner of the sperm. In this case, some scholars authorize the process and do not consider it to be forbidden.

The main proof of this ruling lies in the approval of such narrations like, "*...a man who introduced his semen into a uterus that is forbidden to him,*" which can be used as valid evidence to prove the forbiddance of the second form. Relying on such narrations, we conclude that insemination that is done with a certain man's sperm of the ovum of a woman who is not related to him by any legitimate marital relationship is forbidden. However, this argumentation does not apply to the state of inseminating the sperm of a husband with the ovum of his legitimate wife and introducing the outcome into the genital tract of another wife of the same man. In other words, when the ovum of the second wife is introduced into the genital tract of the first wife, then this state cannot be included with the implication of such narrations like the aforesaid one, which reads, "*...into a uterus that is forbidden to him*."

As a result, since those scholars have presented this sort of narration as their one and only evidence to prove the forbiddance of this form of artificial insemination, it is natural that this argumentation cannot be applied to the previously mentioned state; therefore, we must apply the rule of the initial legality of all things to the case and decide its legality.

## *Objection to the Conditional Legality*

We have already said that drawing conclusion of the illegality of the second form of artificial insemination from these narrations is insufficient. So, even if we reject the inference from the narration and restrict the evidence to the general sense of the Qur'ānic verses of Sūrah al-Mu'minūn (especially verse no. 7; i.e., "*but whoever seeks to go beyond that, these are they that exceed the limits*"), the instance of the third form is still forbidden, because the general sense of the verse entails the illegality of introducing the ovum of the second wife into the uterus of the first one.

In other words, a careful pondering over the general sense of the verse leads us to the result that there is no difference in forbiddance between the two women (i.e., the woman into whose genital tract the ovum will be introduced and the donor of the ovum) being legitimate wives of the owner of the sperm. Although the private parts of the donor of the ovum are legal to the owner of the sperm, it is still illegal for the two wives to make use of the private parts of each other. Generally, the two

women's being the wives of the same husband does not allow them to make use of each other's private parts.

## *A Jurisprudential Study of State No. 3*

In instances when the sperm of a man is used to inseminate the ovum of a marriage-unrelated woman outside the genital tract altogether, the study is focused on two pivotal points principally:

***The First Pivotal Point*** can be posed in the form of the following question: Is such a form of artificial insemination legal or not?

***The Second Pivotal Point*** takes the form of the following question: When the process of insemination outside the genital tract is done, will it be legal to place the outcome into the genital tract of the man's wife or not?

About the first question, some scholars say that there is no objection to such a form, because the narrations concerning artificial insemination (such as: "*...a man who introduced his semen into a uterus that is forbidden to him*") have nothing to do with this instance. In fact, in such instances the process of insemination is done outside the uterus; therefore, the phrase "*a uterus that is forbidden to him*" does not apply to them.

However, in view of the previous and the coming commentary on these narrations, the word "*uterus"* mentioned in the

narration does not give any peculiarity to the uterus as a specific organ; rather, the point focused upon in the narrations is the process of insemination with a certain man's semen of the ovum of a woman who is not his wife. Accordingly, these narrations must refer to the illegality of this instance of artificial insemination.

On the other hand, if we state that the forbiddance involved is essentially drawn from the holy verses, then we cannot confirm the forbiddance of this instance, because the meaning of *seeking to go beyond that*, which is mentioned in the last verse, does not apply to it. In fact, in this instance, the woman has not put her genital tract at the disposal of other persons; rather, an ovum has been pulled out of her genital tract and inseminated with the sperm of a man other than her husband outside the genital tract, including the uterus. So, the forbiddance that is inferred from the holy verse cannot be applied to this instance.

In reply to the second question, we say that in view of the opinion we support, the instance mentioned in the question is included with the forbiddance inferred from the holy verse; therefore, it is illegal to place what results from the union of the man's sperm and the woman's ovum into the uterus of another woman, be she legally married by the owner of the sperm or not. Hence, the forbiddance inferred from the holy verse includes this instance.

# Fourth Form: Inseminating a Husband's Semen with His Wife's Ovum outside the Uterus

The basic feature of this form of artificial insemination is that the sperm and the ovum are produced by the two spouses, but the process of fertilization is done outside the uterus. In view of the placement of the formation of the foetus, a number of instances and probabilities are presented:

## *Instances of this Form*

***First Instance***: The semen and ovum are united outside the genital tract, and the foetus created from this process of union is then transferred into a uterus other than the wife's.

***Second Instance***: After the foetus is formed outside the genital tract, it is transferred to the uterus of the wife who is the owner of the ovum.

On the basis of the general rules and principles that have been mentioned so far, there is no objection to these two instances; therefore, they can be decided as legal. However, the one and only objection that may be raised here is related to the forbidden acts that accompany such operations of artificial insemination; such as touching and looking at the private parts. Of course, these actions are considered to be within the general matters that are beyond the topic of artificial insemination in

particular, since they may happen in all forms and instances of surgeries.

***Third Instance***: After the foetus is formed outside the genital tract from the insemination by the husband's semen of his wife's ovum, it is transferred to the uterus of another wife of the semen's owner or the bondmaid of the ovum's owner.

***Fourth Instance***: After the foetus is formed outside the genital tract, it is transferred to the uterus of a woman who is not the wife of the semen's owner.

With reference to the procedure of insemination outside the genital tract in general, there is no objection to the legality of the third and fourth instances, because the semen is the husband's and the ovum the wife's; and to unite them via an operation of artificial insemination outside the genital tractis not forbidden.

However, an objection arises when the foetus that is formed from such an insemination is transferred to the uterus of another woman, be she another wife of the owner of the semen or not. Thus, this question has to be answered: Is such a process of transferring the foetus to another uterus considered legal or illegal according to the Islamic law?

In fact, the answer to the question with regard to the fourth instance depends upon our answer to the third; therefore, we will concentrate our jurisprudential investigation on the third

instance and study it in the light of the related Qur'ānic verses and narrations.

## *The Legal Ruling of the Third Instance*

### *A. Drawing Conclusion from the Narrations*

Hereinafter, a few points will be mentioned about the narrations containing such statements as: "*...a man who introduced his semen into a uterus that is forbidden to him*."

1) With regard to the legality or forbiddance of the third instance of artificial insemination, this instance is possibly legal, because the second wife's uterus is not forbidden to her husband. In fact, these narrations do not include such instances, since they only warn against employing uteruses that are forbidden to men.

2) It is not unacceptable to broaden the meaning of "*a uterus that is forbidden to him"* (mentioned in these narrations) and not to look at the statement in its narrowest implication. So we can deduce from these narrations that a man's sperm must be introduced exclusively to the uterus of a woman with whom he is lawfully allowed to have sexual intercourse. Similarly, a man's sperm must be used to inseminate only the ovum of a woman with whom he is lawfully allowed to have sexual intercourse. However, if we base our ruling on this deduction, then the legality of the first instance becomes objectionable, because in this instance, the man's sperm was inseminated with

the ovum of his wife by a means other than natural sexual intercourse.

In conclusion, it is not proper to broaden the meaning of the aforesaid statement. Besides, no scholar has decided as forbidden the first instance of this form of artificial insemination.

3) It may be claimed that these narrations deal exclusively with instances in which the owner of the inseminated ovum and the owner of the uterus into which the outcome of the insemination (i.e., the foetus) will be introduced is the same woman. Consequently, an objection to the argumentation will be raised. To answer, such exclusiveness is neither valid nor provable.

In addition to the narrations, there are others that entail from the response of the Imam who was asked, "Which act is wickeder than the other: adultery or consuming alcoholic beverage? Why is the sentence of consuming alcoholic drink only eighty lashes while one hundred lashes have been decided as the punishment of committing adultery?" The Imam answered, "The punishment is the same, but additional lashes have been added to the adulterer, *because he wasted the sperm and placed it in a place other than the one that Allah the Almighty and All-majestic ordered him to place in*."[1]

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1 Shaykh al-Kulaynī, *al-Kāfī* 7/262, H. 12; Shaykh al-Ṣadūq, *man-lā-yaḥḍaruhu'l-faqīh* 4/38, H. 5033; Shaykh al-Ṭūsī, *Tahdhīb al-*

This narration clearly points out that it is illegal to place the semen in another place than the one that Allah has ordered to be placed in. In the light of this narration, we can say that with regard to the third and fourth instances, placing the semen (after insemination outside the uterus) into the uterus of another woman is an example of *placing the semen in a place other than the one that Allah ordered to place in*. Thus can the forbiddance of these instances be proven.

However, in reply to this argumentation, we can say that what is meant by "*the place that Allah ordered to place in*" is namely the uterus of the legitimate wife (or wives) of a man. With regard to the third instance, the uterus of the second wife or the bondmaid of a man is one of the uteruses that have been made lawful for him to employ; therefore, the third instance is proven as legal.

However, it may be said, in reply to this answer, that the order of Allah may stand for that the man's semen is used to inseminate the ovum of the woman whose uterus will carry the foetus formed from that process of insemination. Of course, this case is not applicable to the third instance. Yet there is no evidence supporting this claim, either in this narration or in the following one. In my conception, there is no difference between the Imam's two statements: "*in a place other than the one that*

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*Aḥkām* 7/99, H. 40; al-Ḥurr al-'Āmilī, *Wasā'il al-Shī'ah* 28/98, S. 13, H. 1.

*Allah ordered him to place in*" and "*in a uterus that is forbidden to him*."

Hence, if our argumentation is concentrated on the implications of these narrations, then the third instance of the fourth form of artificial insemination (i.e., the fertilized semen is introduced into the uterus of the husband's other wife) is legal and unobjectionable.

## *B. Drawing a Conclusion from the Qur'ānic Verses*

In the preceding discussion of the legality or illegality of the second form of artificial insemination, we have restricted the evidence of illegality to the holy verse that reads, "*Whoever seeks to go beyond that, these are they that exceed the limits*." If we apply the same to the fourth form at issue, then the jurisprudential argumentation will be different from the one drawn from the aforesaid narration. In other words, in view of the holy verse, the fourth form must be one of the examples of *seeking to go beyond that*. So, if a woman allows the ovum of the fellow wife, be it inseminated with her husband's semen or not, to be introduced into her (i.e., the first wife's) uterus, this will be in violation of the religious laws, since the Holy Legislator does not permit the ovum of a woman to be introduced into the uterus of another woman; rather, what is permitted is only that a wife's uterus receives no other semen but her husband's.

## *Objection*

Some scholars of jurisprudence have considered this instance of artificial insemination to be similar to the first instance in which the semen of a husband is united with his wife's ovum outside the uterus and the foetus (that is formed as a result of this union) is grown in a medical device. On the grounds of this similarity, they have decided as legal this instance, saying that there is no objection to introducing the foetus into the uterus of another woman.

Within other points of evidence and in view of this similarity, the legality of this instance is concluded from the point that the narrations do not hold any indication of the opposite.

## *Answer to the Objection*

In fact, the evidence of the forbiddance of this instance is the holy verse involved. In other words, this instance must be included with the general sense of *seeking to go beyond that*. Of course, the instance is still inapplicable to the artificial uteruses, since there is no evidence on the illegality of placing a foetus in an artificial uterus. As a result, the ruling of the two cases must be different.

## *Final Conclusion*

There is no possibility of deeming lawful the third instance of the fourth form of artificial insemination. Of course, the same is said about the fourth instance.

## *Another Proof of the Legality of the Third Instance*

Some scholars have deemed lawful the process of placing the outcome of insemination into the uterus of another woman than the owner of the ovum, providing as their evidence the illegality of aborting a foetus that is formed illegitimately (i.e., by way of adultery). They thus say: Just as it is illegal to abort a foetus that is formed as a result of illegitimate sexual intercourse, so also must it be decided as illegal to eliminate the foetus formed from a process of artificial insemination. This requires that the formed foetus be placed in another uterus. Here, this uterus is viewed as serving as a device for guarding the foetus that was formed after the process of insemination.

## *Answer to the Argumentation*

This argumentation obviously involves a false reasoning. The central topic of the current discussion revolves around the inseminated ovum that will be placed in a uterus. Of course, if this ovum is left as it is, it will certainly cease to exist, for there is no way that it will continue to live naturally. The central topic of the ruling of aborting a foetus that has been formed as a result of adultery is the inseminated ovum that has been already introduced into the uterus; and, if it is left as it is, there will exist the factors of its natural growth and the union (of the semen and the ovum) will eventually transfer into a foetus and then a child.

Regarding the union of the semen and the ovum that has not been yet placed in a uterus, we need a proof so that we can say

that it must be placed in a uterus; otherwise, it will be decided as a sort of forbidden murder.

Generally, there is no logical consistency between the abortion of the foetus, which results in killing it, and the duty of keeping it alive. Moreover, even if such logical consistency were to exist, it will be beside the point under discussion, because we are only investigating instances of inseminating in order to cause an embryonic cell to be formed. Of course, this embryonic cell has not been yet taken to the title of inviolable soul (*nafs muḥtaraham*), which is forbidden to kill. It is well known that an embryonic cell takes the title of inviolable soul only after it settles in a uterus and becomes a foetus.

## *Scientific Point of View*

In the previous discussion, providing evidence on the forbiddance of artificial insemination from such narrations as "*...a man who introduced his semen into a uterus that is forbidden to him*" has been proven as incomplete. We have also proven that these narrations do not hold a general principle by which a ruling is identified with regard to the forbiddance of artificial insemination. Therefore, we cannot consider the introduction of semen into a uterus to be the central point of the forbiddance involved; rather, the central point in these narrations lies in the process of inseminating a woman's ovum with a man's sperm, whether this process is done inside or outside the uterus. In fact, both cases are included within the punishments mentioned in these narrations. On the other hand,

if the male's reproductive fluid is not used in the process of insemination in the female's genital tract, even if it has actually been introduced into the genital tract, then these narrations have nothing to do with these instances. This shows that the central point in the narrations is not the genital tract or the uterus specifically; rather, it is the process of inseminating the female's ovum with the male's fluid when such union becomes the raw material of the formation of the foetus.

As a result of such a general sense, the criterion of the forbiddance of artificial insemination is that the male's semen is used to inseminate the ovum of a woman who is not related to him by any legitimate marital relationship; yet, it does not make any difference whether the process of insemination is done inside or outside the uterus. So, the forbiddance of artificial insemination is exclusively restricted to this instance, while all other instances are without exception legal. Accordingly, we can judge that there is no forbiddance in all of the instances of the fourth form of artificial insemination, whether the material produced from inseminating the female's ovum with the male's semen is introduced into the uterus of the donor of the ovum, or the other wife of the owner of the semen, or his bondmaid, or a woman who is not related to him, or a medical device, etc. This general rule is inferred from the narrations involved.

Besides, a deep pondering on the sense of the holy verse "*Whoever seeks to go beyond that, these are they that exceed the limits*" leads us to another general rule that, unlike the one concluded from the narrations, entails a kind of peculiarity to

the uterus. Thus, the criterion of the forbiddance of employing a uterus lies in the point that any woman who allows others to introduce somebody else's semen into her uterus, i.e. to accept the transplantation of an inseminated ovum -if it were fertilized by the semen of someone other than her husband, or it has been used by the inseminated ovum of another woman –even if it was inseminated by her husband's sperm- will be included with all of the articles mentioned in the holy verse. So, the woman must be decided to have committed a forbidden action.

However, the following question may be raised in view of the preceding discussion: It seems that there is a contradiction between the two general senses. Does it not? In other words, with regard to those who consider the narrations to hold complete evidence and at the same time accept as true the general sense of the verse, it is evident that there is a contradiction between this general sense and the criterion that is concluded from these narrations.

The answer is affirmative. There is actually a contradiction between the two; therefore, the rules of contradiction must be applied here. Moreover, the same contradiction is mostly found in the third and fourth instances of the fourth form of artificial insemination, because the general sense of the narrations deems legal these instances while the general sense of the verse deems the opposite.

However, this point has been presented from a mere scientific point of view and it has been necessary not to overlook it. Still,

the evidence on the forbiddance of artificial insemination that is concluded from the narrations is incomplete; so, it is not feasible to depend upon the general sense of the narrations and claim that it is inconsistent with the general sense of the verse.

## *Hired Womb (surrogacy)*

In the light of the previously mentioned discussion, the ruling of womb hiring becomes clear. In fact, the hired womb is the same as the third and fourth instances, wherein the foetus that is formed from the insemination by the sperm of a husband of the ovum of his wife is introduced into and kept in the uterus of another woman until the time of childbirth.

The result concluded from the preceding discussion of the fourth form of artificial insemination is that it is forbidden for women to put their wombs at the disposal of other men than their husbands, in any form, including the form of hiring. However, if this forbidden act is committed, other questions regarding the paternity of the child and the child's rights of inheritance and the like issues must be identified. This issue and its likes will be the topic of the next chapter.

# Fifth Form of Artificial Insemination: Uncommon Instances

In the previous chapters, we have discussed many of the forms of artificial insemination that are in circulation these days and

are traditionally and scientifically operable. In addition to these forms, there are other instances that can be hypothetically imagined, although they do not exceed theory in the present day, because of the rapid evolution witnessed by all fields of knowledge, especially medicine. Even though these instances can be seen in laboratories only, we will study them from a Muslim jurisprudential point of view in order to avoid any imperfection in our discussion.

***First Case***: ***Inseminating a man's sperm with the ovum of a female animal***

This case can be subdivided into such instances like the following:

***First Instance***: Introducing the foetus that is formed from the insemination by the sperm of a human being of the ovum of an animal into the uterus of a female human being.

***Second Instance***: Introducing the foetus that is formed from the insemination by the sperm of a human being of the ovum of an animal into the uterus of a female animal.

Let us now study these instances in the light of the related Qur'ānic verses and narrations:

## *In the Light of Narrations*

All the narrations that are related to the issue of artificial insemination are centred on inseminating a female human's

ovum with a male human's semen. Thus, there is no single indication of insemination with a male human's semen of female animal's ovum. For instance, the narrations that hold such statements like "*...a man who introduced his semen into a uterus...*" clearly show that the two parties of such an act of insemination (i.e., the owner of the semen and the owner of the ovum) are human beings. On the basis of this fact, those who restrict the evidence of the forbiddance of artificial insemination to these narrations must deem lawful such insemination involving human beings and animals, because no reference has been made to this instance in these narrations; therefore, the original ruling must be chosen, which is the presumption of the legality of all things as long as there is no evidence on the opposite.

## *In the Light of Qur'ānic Verses*

In accordance with the detailed discussions found in the previous chapters, the general sense of the holy verse "*Whoever seeks to go beyond that, these are they that exceed the limits*" encompasses such instances as the previous ones. From this aspect, we can assume the forbiddance of such instances of human-animal artificial insemination.

The verse preceding the aforesaid one reads:

> … And (those) who guard their private parts, except before their mates or those whom their right hands possess, for they surely are not blameable.

However, a question is posed here: Why has the question of guarding the private parts not been finished at this point; rather, an exception has been added?

To answer, the syntactical structure of the last two verses demonstrates that there is a general criterion to be noticed with regard to the ruling deduced from the series of verses. To explain, the Arabic prefix "*fa"* that is added to the phrases "*fa'innahum ghyru malūmīn* (for they surely are not blameable)" and *'faman ibtaghā...* (but whoever seeks…)" denotes that any kind of relationship between a man and a woman is legal only when it takes the form of a marital relationship; therefore, any affair between a woman and a man who is not her husband, including when this relationship is restricted to introducing the inseminated ovum of another woman into the wife's uterus, both are considered forbidden according to the general ruling deduced from these holy verses. Therefore, with regard to the question under discussion, using the husband's semen to fertilize an ovum that is forbidden to him, introducing into the wife's uterus the product of using the husband's semen to inseminate an animal's ovum is forbidden, too.

***Second Case: One of the Parties of Insemination is a Plant***

Modern medical studies have proven that it is possible to employ certain cells of plants, be they male or female, in processes of artificial insemination, the other party of which is a human being, being the procreation of new cells.

According to the opinion of those who restrict the evidence of the forbiddance of artificial insemination to the narrations, there is no objection to employing plant cells and inseminating them with human semen or a human ovum with the outcome then introduced into the uterus of a woman. Because the forbiddance of such plant-human insemination cannot be concluded from these narrations, the general rule of the initial legality of all things is applied here and the case is decided as legal.

On the other hand, according to my conclusions and the general sense of the aforesaid holy verses, such cases are decided as forbidden, because they are included with the general forbiddance entailed by these holy verses.

## *Argumentation through the Purposes of Enacting the Islamic Laws*

Sunni Muslims dedicate a part of their jurisprudential studies to investigating the purposes for which the Almighty has enacted the laws in order to explore the purposes. Such investigations are known as *maqāṣid al-sharī'ah* (purposes of enacting the Islamic laws). Making use of these aims and purposes, they deduce rulings and issue verdicts. For instance, they claim that the purpose of enacting the laws of marriage is to maintain the human race in its human form. Thus, the parents of every child must be identified and the growth of the child must be completely legal (i.e., compatible with the Islamic law) so that

the semen, after being united legally with the ovum, changes into a foetus and then the legitimate mother gives birth to the child in a legal manner, too. In this process of procreation, they depend on verse no. 14 of Sūrah al-Mu'minūn (no. 23).

Based on this logic for the enactment of the marital laws, it is decided that any way of procreation other than the one described by the Almighty in the aforementioned verse is in violation of the *purposes of the Islamic laws*, even if it may be scientifically possible. This is so because the Holy Legislator has created humanity in *the best stature*, and the purpose is that human beings should be born through this way exclusively in the best stature.

Holding strongly to this *purpose*, some scholars have decided that insemination between a husband and a wife is legal only when it is done via the natural means; therefore, any form of artificial insemination is illegal.

By applying this opinion to the question at issue, we conclude that getting a human foetus by making use of an ovum of an animal or a plant is incompatible with the objective of the Legislator and the *purpose of enacting the Islamic laws*.

Of course, we do not accept this opinion as independent evidence; rather, it may be considered as an opening to many studies of such jurisprudential questions.

# Positive Laws and Lawful Effects Resulting from Artificial Insemination (*ivf*)

In the previous chapter, we discussed with details the jurisprudential aspects of artificial insemination in order to prove or disprove the legality of its various forms.

In this chapter, we will discuss the most important prerogative points of artificial insemination, especially those related to the legal situation of the children born through such operations, their filial privileges, and their real parents.

In fact, the discussion of this topic is not less important than the previous one, because everybody, especially the families who have been involved in artificial insemination, are posing a wide variety of questions about the rights and lawful situations of the children born through this method. Because the majority of questions are directed to the issues of womb hiring, we will discuss mainly this matter, along with some other issues.

## *Reality and Definition of Kinship Relationship*

The majority of the jurisprudential and prerogative questions about identifying the parents of the children who are born after conception by way of artificial insemination can be answered only when the actual meaning of kinship in the sight of the

Islamic legislation is identified. Thus, the answer to all of such questions depends mainly on answering the following question:

Does kinship hold a specific meaning in the terminology of the Islamic legislation? Is it considered to be a legal fact or not?

The answer to this question will be the starting point of our study of the prerogative laws of the various forms of artificial insemination. In this study we will try to prove whether kinship has a specific meaning in the terminology of Islamic legislation.

Two opinions are posed with regard to this question:

The ***First Opinion*** entails that kinship does not hold a specific concept or a definite meaning in the terminology of the Islamic legislation; rather, the terminological meaning of kinship is the same one identified by tradition. Hence, it is tradition that gives kinship its meaning. Besides, tradition is responsible for specifying the sense and the criterion of kinship.

Hence, when tradition entitles the owner of the semen as the father and the owner of the ovum as the mother, this will be sufficient to state who the actual father and the mother of the child are.

The ***Second Opinion*** entails that kinship has a specific meaning in the Islamic legislation and that it holds a definite fact. Thus, Islam holds a special concept of kinship. This fact is proven through some data and points of evidence. As a result, it is required to investigate the actual definition of kinship according

to the terminology of the Islamic legislation in order to identify and recognize it. According to this opinion, tradition cannot be the criterion of identifying the actual meaning of kinship, especially in such issues as artificial insemination.

## *Evidence of the Second Opinion*

In fact, the evidence of the second opinion is mainly centred on the following two points:

## *1. Disavowing the Kinship of Illegitimate Children*

The Holy Legislator does not acknowledge the kinship of the illegitimate children; that is, in the Islamic law, a child that is born as a result of an illegitimate relationship is not affiliated to his or her father or mother; therefore, the child's kinship is disavowed. This is one of the unquestionable issues in the Shīʿah Muslim jurisprudence.

In this regard, al-Muḥaqqiq al-Najafī says,

> "Under all circumstances, all scholars have unanimously decided that parenthood of illegitimate children is invalid. Moreover, this ruling is necessarily true, not to mention its provability through uninterruptedly reported traditions."[1]

One of the effects of this ruling is that the illegitimate child does not inherit from the adulterer and the adulteress. Although this ruling has been decided by the majority of scholars, some

1 *Jawāhir al-Kalām* 29/256.

ancient scholars—such as Shaykh al-Ṣadūq and Yūnus ibn ʿAbd al-Raḥmān—decided the opposite (i.e., that illegitimate children have the right to inherit from their fathers and mothers), depending upon some narrations that have dealt with this subject.[1]

Those who believe that kinship has a definite meaning and implication in the terminology of Islamic legislation have founded their opinion on the fact that the Islamic legislation decides that illegitimate children are neither affiliated to their fathers and mothers nor allowed to receive any share of their legacies. This means that the naming of fathers and mothers is in the hand of the Holy Legislator alone. So, when the Legislator identifies the father and mother of a person, only then can the kinship of that person be proven. Thus, it is invalid to decide the father and mother of a person on the basis of conventional tradition.

## *Critique of the Argumentation*

In the light of these proofs and facts, the following question may be posed: Is it possible to conclude from the previous discussion that the kinship between any two persons is considered invalid whenever the Holy Legislator decides that there is no inheritance between these two persons?

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1 The details of this issue can be referred to in *Jawāhir al-Kalām* 39/275.

Does the cancellation of inheritability always mean invalidity of kinship from the view of the Holy Legislator? Or does it happen that the Holy Legislator agrees to the existence of kinship between the adulterer and the illegitimate child, but the illegitimate child is decided to be out of the circle of the heirs by an exceptional rule?

## *Exception or Setting Aside*

As has been previously discussed, illegitimate children do not have the right to any share in the inheritances of their fathers and mothers. This ruling has been decided by the majority of jurisprudents.

With regard to this rule, the following question needs to be answered: Did the exclusion of the illegitimate children from the list of the heirs come as an exception from a general law, or it came because these illegitimate children are not originally applied to the entitlement of inheritance, because they are not related to the inherited person by any kinship affiliation?

If they are considered to be an exception from a general rule, this means that these illegitimate children have the right to inherit from their fathers and mothers because they are the sons or daughters of these fathers and mothers, but they have been deprived of any share of the inheritance for a certain reason. Therefore, they are excluded from the general details of the inheritance laws.

On the other hand, if they are originally not entitled to inheritance, this means that these illegitimate children are not the sons or daughters of the inherited men and women; rather, they are *a priori* out of the circle of the heirs.

If the second probability is the most accurate, we can then decide that the Holy Legislator holds a specific meaning of kinship and that He has initially disavowed the kinship affiliation between an illegitimate child and his or her father and mother; therefore, that illegitimate child cannot inherit from these persons.

As there is no evidence to prove either of the two probabilities, we have to decide that the answer to the question is that the matter *swings between exception and setting aside*.

Within the topics of *'ilm al-uṣūl*, the issue of *swinging between exception* (*takhaṣṣuṣ*) *and setting aside* (*takhṣīṣ*) is discussed under the title of *the general and the particular*. One of the questions that is answered under this discussion is the following: Is it possible to cancel out the *exception*, depending upon the general rule of the generality of all issues unless there is evidence on particularity, in order to hold on to *setting aside*?

Some scholars of *'ilm al-uṣūl* believe that it is possible to cancel out the *exception* in order to hold on to the *setting aside* by applying the rule of the initial generality of all things to the issue. Giving an example, they argue that such as a general command like "*Honour the scholars"* does not hold any

exception; therefore, depending upon the absence of any exception in this command, we can say that *so-and-so* is set aside from this command, because he or she is not a scholar. In the words of *'ilm al-uṣūl*, this result is expressed as follows: *So-and-so* is out of the command because of *setting aside*.

On the other hand, the late al-Ākhūnd al-Khurāsānī believes that in such cases, it is impossible to assume *setting aside* (and cancel the exception) by applying the general rule of the initial generality of all things and to claim that the person who must not be honored is definitely not a scholar, depending upon the previously mentioned general rule.

However, many arguments have been raised against this opinion. Further discussion of the issue can be found in the studies of *'ilm al-uṣūl*.

In general, the evidence on the aforesaid opinion is provided in this way:

The principles of Muslim jurisprudence with regard to verbal issues, such as the general rule of the initial generality of all things (*aṣālat al-'umūm*), the general rule of generalization (*aṣālat al-iṭlāq*), and the like rules have been made for no other purpose than simplifying the implication of the statements. However, it is a big mistake, in the view of rational people, to give ourselves the right to take on an issue as we like and set aside the reality of it. With regard to the example at issue, it is inaccurate to conclude that *so-and-so* must not be honoured

because he is not a scholar, depending upon the general rule of the initial generality of all things. In conclusion, such personal views cannot be applied to the verbal principles of jurisprudence.

As we have proven that the general rule of the initial generality of all things cannot be applied to the issue under discussion, the result becomes that the Holy Legislator must have excluded the illegitimate children from being legal sons and daughters of their fathers and mothers. Therefore, these children have been ruled out under the laws of inheritance because they have been excluded from these laws. The same thing is applicable to the other laws that appertain to illegitimate children, such as the prohibition of choosing them as leaders of congregational prayers, as supreme religious authorities, etc.

It seems necessary to stop at this point of discussion, because it is not feasible to claim that the kinship relationship between the illegitimate children and their parents is cut off without exception. In fact, if we look at the issue from a neutral angle, we have to confess that the illegitimate child filially belongs to his or her father and mother, because he or she cannot be affiliated to any other person.

## *Note*

As has been previously cited, the author of *Jawāhir al-Kalām* claims that illegitimate children are not related to their parents—a rule that is necessarily and consensually decided by

all scholars. In fact, this claim has been founded on clear-cut narrations that appertain to this topic. Of course, cancelling out any kinship affiliation between illegitimate children and their parents does not mean that these children have been set aside from any law that organizes the relationships between children and their parents; therefore, it is forbidden for illegitimate sons to marry their mothers, sisters, and the like. In other words, all laws that appertain to the marital relationships between relatives are applicable to illegitimate children as well.

## *2. The General Rule: "The baby belongs to the owner of the bed…"*

One of the general rules of Muslim jurisprudence reads, "The baby belongs to the owner of the bed, and the share of the fornicatress is the stone." Of course, this general rule has something to do with the topic at issue. On the one hand, this rule can stand for a point of evidence for those who claim the absence of a definite meaning for kinship in the terminology of Muslim jurisprudence. On the other hand, this rule has been made the criterion of identifying the fathers of the children of certain forms of artificial insemination.

Hereinafter we will discuss, yet generally, the initial implications of this general rule. Then, we will move to investigate the aforesaid two aspects of the rule accordingly.

## *Proofs of the General Rule*

In fact, the general rule of "The baby belongs to the owner of the bed, and the share of the fornicatress is the stone (*al-waladu lilfirāsh walil-ʿāhir al-ḥajar*)" is one of the jurisprudential principles that have been unanimously agreed upon by both Sunni and Shīʿite scholars. Moreover, the totalities of this rule are agreed upon by all Muslim sects. The proofs of this rule are so many that we can assuredly consider it to have been uninterruptedly reported from its source. We will therefore quote a number of the narrations that appertain to this rule in order to better understand its concept and signification.

### *First Narration*

Imam ʿAlī, in his answer to Muʿāwiyah, who had raised an objection when he disavowed the fatherhood of Ziyād ibn Abīh, is reported to have said,

> "As for disavowing the father of Ziyād, it was not I who did so; rather, it was the Messenger of Allah, when he said, 'The baby belongs to the owner of the bed, and the share of the fornicatress is the stone.'"[1]

Although the linguistic meaning of the Arabic word *firāsh* 'bed' is known to everybody, it came in this narration by metonymy to denote the husband or the one who had sexual intercourse

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1 Shaykh al-Ṣadūq, *al-Khiṣāl* 1/213; ʿAllāmah al-Majlisī, *Biḥār al-Anwār* 44/115, S. 21, H. 10.

with the mother of that child. Thus, the narration means that the child legally belongs to the owner of the bed.

The Arabic word *'āhir* means the fornicatress. Thus, the narration says that the fornicatress does not have any right to that child. The last word of the narration has been introduced in two forms: *ḥijr* and *ḥajar*. According to the first form, the narration means that the child is interdicted from the fornicatress. According to the second form, the meaning becomes that the fornicatress must be taken away from the child even by throwing stones on her.

***Second Narration***

Al-Ḥasan ibn Ṣayqal has reported Imam al-Ṣādiq as follows:

> The Imam was asked about the ruling in the case of a man who bought a bondmaid and had intercourse with her before the end of her waiting period (i.e., the period of clearing the uterus).
>
> He answered, "Evil is what he did. He must implore God for forgiveness and never do that again."
>
> "That man sold the bondmaid to another man who did not observe the period of clearing the uterus. He then sold her to a third person who did not observe her period of clearing the uterus either. The third man came to know about her pregnancy," the Imam was told.

> He answered, "*The baby belongs to the owner of the bed, and the share of the fornicatress is the stone.*"[1]

***Third Narration***

This narration is the same as the previous one, yet with the following difference:

> … Imam al-Ṣādiq answered, "The baby belongs to the current owner of the bondmaid. He must be patient, because the Messenger of Allah said, 'The baby belongs to the owner of the bed, and the share of the fornicatress is the stone.'"[2]

***Fourth Narration***

Saʿīd al-Aʿraj is reported to have asked Imam al-Ṣādiq, "Two men had sexual intercourse with one bondmaid during the same period of her purity (from menstruation). To whom does the baby belong?"

The Imam answered,

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1 Shaykh al-Kulaynī, *al-Kāfī* 5/491, H. 2; Shaykh al-Ṣadūq, *man-lā-yaḥḍaruhu'l-faqīh* 3/450, H. 4557; Shaykh al-Ṭūsī, *Tahdhīb al-Aḥkām* 8/168, H. 11; al-Ḥurr al-ʿĀmilī, *Wasā'il al-Shīʿah* 21/173, S. 58, H. 2.

2 Shaykh al-Ṭūsī, *Tahdhīb al-Aḥkām* 8/196, H. 12; al-Ḥurr al-ʿĀmilī, *Wasā'il al-Shīʿah* 21/173, S. 58, H. 3.

> "The baby belongs to the one who currently possesses the bondmaid, for the Messenger of Allah said, 'The baby belongs to the owner of the bed, and the share of the fornicatress is the stone.'"[1]

According to this narration, the case of two men who had sexual intercourse with one bondmaid during the same period of purity and their sperms were introduced into her uterus, was raised before the Imam. Depending upon the general rule involved, the Imam decided that the child belongs to the current owner of the bondmaid.

***Fifth Narration***

Al-Ḥalabī has authentically reported Imam al-Ṣādiq as saying,

> "If a man had sexual intercourse with a bondwoman illegitimately and then bought her and claimed her child's fatherhood, the child has no right to inherit anything from that man, because the Messenger of Allah said, 'The baby belongs to the owner of the bed, and the share of the fornicatress is the stone.'"

***A Narration from Sunni Reference Books of Ḥadīth***

> "…ʿUtbah ibn Abī-Waqqāṣ had taken a firm promise from his brother Saʿd to take the son of the slave-girl of Zamʿah into his custody as he was his (i.e., ʿUtba's) son. In the

1 Shaykh al-Kulaynī, *al-Kāfī* 5/491, H. 3; al-Ḥurr al-ʿĀmilī, *Wasā'il al-Shīʿah* 21/174, S. 58, H. 4.

year of the Conquest (of Makkah), Saʿd took him, and said that he was his brother's son, and his brother took a promise from him to that effect. ʿAbd ibn Zamʿah got up and said, 'He is my brother and the son of the slave-girl of my father and was born on my father's bed.' Then they both went to the Prophet. Saʿd said, 'O Allah's Apostle! He is the son of my brother and he has taken a promise from me that I would take him' Abd ibn Zamʿah said, '(He is) my brother and the son of my father's slave-girl and was born on my father's bed.' Allah's Apostle said, 'The boy is for you, O ʿAbd ibn Zamʿah.' Then the Prophet said, 'The baby belongs to the bed, and the share of the fornicatress is stones.' The Prophet told his wife Sawdah bint Zamʿah to screen herself from that boy as he noticed a similarity between the boy and ʿUtbah. So, the boy did not see her until he died."[1]

## *The Relationship between the General Rule and the Concept of Kinship*

Some scholars have provided the general rule involved as their evidence to prove that kinship holds a special concept in the Islamic legislation. According to these narrations, they argue, the Holy Prophet ascribed the child to the woman's husband or the bondmaid's owner, but he did not decide that the child belonged to the other man who slept with the woman. This

1 *Ṣaḥīḥ al-Bukhārī* 3/70; *Ṣaḥīḥ Muslim* 2/1080, H. 36; *Sunan Ibn Mājah* 1/646, H. 2004.

proves that the identification of one's kinship is decided by the Holy Legislator.

In reply to this conclusion, we say that the rule is applied only when the kinship of a child is doubted and unidentified. In the prerogative aspects of such cases, it is well known that the Holy Legislator must give a decision. At any rate, the child's identity must be identified by the Holy Legislator under any title or designation. Yet the reality of the matter cannot be reached, because the judgment of the Holy Legislator might be based on another factor than the reality. For instance, the Holy Prophet, according to the aforesaid narration, ordered his wife to veil herself from that child as a sort of observation of precaution, because the child looked like 'Utbah. In conclusion, the purpose of deciding this rule in Islam is to say the actual and the apparent rulings that are appertained to such children, but the rule is not purposed to tell the actual kinship relationship of the illegitimate children.

## *The Implication of Applying the Rule*

A deep pondering over the actual tenor of the rule involved takes us to two important points:

***First Point***: The rule becomes practically applied in cases of adultery and in cases of doubting whether the sperm was the fornicator's, the husband's, or the bondmaid's owner's. The clearest evidence of this conclusion can be seen in the last phrase of the rule; namely, "*the share of the fornicatress is*

*stones*." In other words, the phrase "*the baby belongs to the owner of the bed*" is a criterion identified by the Islamic law, and this criterion is invoked in cases of adultery only.

***Second Point***: The rule is applied in cases when there is a possibility of ascribing the child to the husband of the woman (who gave birth to the illegitimate child). Therefore, when the owner of the sperm is identified without doubt, then the rule becomes irrelevant.

However, more points can be deduced from the study of the rule, and this requires an independent and detailed research.

## *Identification of the Child's Paternal Kinship in the Various Forms of Artificial Insemination*

In the previous chapters we have discussed the jurisprudential opinions and rulings of the various forms of artificial insemination. Let us now investigate the kinship of the child that is formed and born from a process of artificial insemination.

### *First Form*

In the first form of artificial insemination, where the husband's sperm is used to inseminate the wife's ovum, there is no doubt that the father of the child formed from this process is the owner of the sperm and his or her mother is the owner of the ovum.

## *Second and Third Forms*

There are a number of probabilities in the process of introducing the sperm of a man into the genital tract of a woman who is not his wife:

When the insemination by the sperm of the ovum is done outside the uterus and a child is born, it goes without saying that the father of the child is the owner of the sperm. The same thing is applicable to the instance of introducing sperm into the genital tract of an unmarried woman.

However, when the owner of the genital tract into which the sperm was introduced is married to a man other than the owner of the sperm, it is probable that her husband might have copulated with her after the introduction of the sperm into her genital tract and her ovum might have been inseminated by her husband's sperm; in such a case we will need to know who the actual father of the child would be.

By applying the rule of "*The baby belongs to the owner of the bed*..." we have to decide that the husband of the woman, not the owner of the sperm that was introduced into her genital tract, is the father of that child.

We have already decided that the rule involved is not restricted to the cases of adultery; rather, it is so general that it includes all cases where there is the possibility that the child is related paternally to the husband, if she was a married woman, or to the owner of her, when she was a bondmaid, the rule involved must

be applied (i.e., if the woman was married, the child's father is her husband; and when she is a bondmaid, the child's father is her master).

## *Fourth Form: The Hired Womb*

If an operation of artificial insemination is done using the semen of a husband and the ovum of his wife, but the outcome is introduced into the uterus of another woman, in this case we have to decide who the child's mother would be. Generally, the child's mother is one of two: either the owner of the ovum or the owner of the uterus.

In such cases, the rule of "*The baby belongs to the owner of the bed...*" cannot be applied, because the owner of the sperm is identified. Therefore, we have to refer to tradition in order to identify the child's mother. In fact, tradition rules that the child's mother is the owner of the ovum, but not the owner of the uterus wherein the child grew.

## *Sayyid al-Khūʾī's Opinion about the Identification of the Child's Mother*

The late Sayyid al-Khū'ī has had a different opinion in this regard. He believes that the mother of a baby must be the one who gave birth to it. This opinion of his is based on the following holy Qur'ānic verse:

> "As for those of you who put away their wives by likening their backs to the backs of their mothers, they are not their

> mothers. Their mothers are no others than those who gave them birth. Most surely, they utter a hateful word and a falsehood; and most surely, Allah is Pardoning, Forgiving. (58/2)"

Sayyid al-Khū'ī thus says,

> The woman into whose genital tract the sperm was introduced is the mother of the child according to the Islamic law. In fact, the mother of a baby is exclusively the one who gave birth to it. This is the essential meaning of Almighty Allah's saying, "*As for those of you who put away their wives…*"

In order to simplify Sayyid al-Khū'ī's opinion, we say that, in the holy verse involved, Allah the Almighty has defined the mother of those husbands who liken the backs of their wives to the backs of their mothers (*ẓihār*)[1] to be only the woman who had given birth to them. This shows that the actual mother of a person is exclusively the woman who had given birth to him or her.

Based on this opinion, when the ovum of a woman is inseminated with her husband's sperm and then introduced into

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1 Ẓihār (Repudiative divorce), a sort of divorce that was circulating among the Arabs before Islam, is the husband regarding his wife as his mother, or as one of his unmarriageable relatives, with regard to the forbiddance of marrying her, such as if he says to her, "*anti ʻalayya kaẓahri ummī* (You are to me like my mother's back)". According to the Islamic law, *ẓihār* is forbidden.

the uterus of another married woman whose husband, after that, copulates with her and she becomes pregnant, the owner of the uterus who gave birth to a baby must be decided as its legal mother, but not the owner of the ovum.

## *Critique of Sayyid al-Khūʾī's Opinion*

Hereinafter, we will disapprove of Sayyid al-Khūʾī's opinion from two aspects:

***First Aspect***: In the pre-Islamic era, when a husband intended to break up with his wife, he would say to her such statements as, "You are now just like my mother's *back* (*ẓahr*)." Thus, husbands would declare that they consider their wives as their mothers, because it is illegal for them to marry their mothers. Note that the Arabic word *ẓahr* (back) is tantamount to marriage and sexual intercourse.

The holy verse has come to warn against such behaviour. So, the verse implies that husbands cannot apply their relationships with their mothers to their wives so that they would separate from them and deem it forbidden to have sexual intercourse with them, claiming that they are just like their mothers.

In brief, the holy verse has nothing to do with the identification of one's mother; rather, it has come just to correct one of the pre-Islamic misconceptions and mistaken beliefs, so that people would no longer apply their relationships with their mothers to their relationships with their wives.

***Second Aspect***: There are some cases related to mother-child relationships that contradict the opinion of Sayyid al-Khū'ī. For instance, when a pregnant woman dies and her uterus is then cut open and the baby is taken out alive, in this case we cannot say that the dead mother gave birth to that baby, because *giving birth* (expressed in Arabic as *wilādah*) exclusively means bringing a baby out of the uterus through the natural means of bearing. So, if the baby is not taken out of the uterus by natural means, the term of *giving birth* cannot be applied to its mother. However, tradition still considers the dead woman as the mother of the baby.

## *Children of Artificial Insemination Have Two Mothers*

There is the probability that the children of artificial insemination may have two mothers. Generally, this is acceptable, because some people do have two mothers; one is the natural mother and the other is the foster-mother.

If we set aside the other entries that have nothing to do with the original case and found our research independently on the basic facts of the issue, we can possibly say that the foetus that grew and was fed for nine months in the uterus of a woman who subsequently gave birth to it must be considered her child, although its actual mother is the owner of the ovum. Then, the owner of the ovum may be treated as the child's foster mother.