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# ***Three-Parent In Vitro Fertilization (IVF): An Approach to the Position of Muslim Jurisprudence and Arab Laws—Emirati Law as a Model***

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**ABSTRACT:** This article aims to elucidate the position of Muslim Jurisprudence on the matter of Three-Parent in Vitro Fertilization (IVF) while linking it to the position of Arab laws—the Emirati Law—as a model. The present study adopted an inductive analytical method. Three Parent IVF takes place by injecting the nuclear deoxyribonucleic acid (DNA) from the ovum of the mother (wife) inserting this nuclear DNA in an ovum given by a female donor, from which the nucleus has been removed. This new ovum is then fertilized by sperm from the father (husband) by traditional methods inside the laboratory. The author concludes that Islamic Law is opposed to this practice, and that Emirati Law does not permit it in such form.

**Key words:** Three-Parent in Vitro Fertilization (IVF), Muslim Jurisprudence (Fiqh), Emirati Law.

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## Introduction

The British House of Commons approved on 3/2/2015 mitochondrial donation or “Three Parent In Vitro Fertilization (IVF)” using the nuclei of one female, inserted into the enucleated ovum of another female and then fertilized with sperm, based on “Human Fertilization and Embryology” Law. The Members of Parliament in the British House of Commons voted in favor of permitting scientists to produce embryos in this fashion. Hence this article aims to elucidate the position of Muslim jurisprudence on the matter of Three-Parent IVF, and the related position of Arab laws — Emirati law as a model. The article is divided into three parts:

**First: Medical position**

**Second: Position of Muslim jurisprudence**

**Third: Position of Emirati Law**

### First: Medical Position

The creator of the idea of a Three-Parent embryo is Dr. John Zhang, who used a technique to transfer the nuclear DNA from the mother (wife) into a donor egg from a woman who did not have mitochondrial disease.<sup>1</sup> Then he fertilized the donor egg which contained the mother’s (wife’s) nuclei with sperm cells from the father (the husband) by the traditional methods of in vitro fertilization inside the lab. In such case, the resulting child would bear approximately 0.1% of his DNA (i.e. the mitochondrial DNA) from the Donor. The first example of this technique was performed in Mexico in September 2016, when it was announced that a child from a Jordanian family was born as a result of this technique. At that time, the child was five months old. The child’s mother carried

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<sup>1</sup>The Mitochondria is one of the components of the cell, and it acts like precise batteries that generate energy in the human cells the energy stored in the food is transformed into a form that cells can use. If it has a defect or a mutation, it loses the ability to manufacture energy in a good manner, which affects the activity and life of the cell, and may lead to major health problems including nerve damage, heart failure and loss of vision. One child in every 4,000 children in America is born with inherited diseases related to the Mitochondria, that have no cure, and only few of the injured persons would live till the age of maturity. See: (1) <http://www.aljazeera.net/news/healthmedicine/2016/9/28/%D9%88%D9%84%D8%A7%D8%AF%D8%A9-%D8%B7%D9%81%D9%84-%D8%A3%D8%B1%D8%AF%D9%86%D9%8A-%D8%A8%D8%AA%D9%82%D9%86%D9%8A%D8%A9-%D8%AB%D9%84%D8%A7%D8%AB%D9%8A-%D8%A7%D9%84%D8%A2%D8%A8%D8%A7%D8%A1>(last visited July. 20, 2017); (2) <http://www.bbc.com/news/health-37485263> (last visited July. 22, 2017); (3) <https://www.livescience.com/56299-three-person-baby-created.html>(last visited July. 22, 2017); (4) [https://www.researchgate.net/profile/Tarek\\_Kapiel/publication/272295683\\_Three-parent\\_babies\\_a\\_therapeutic\\_technique\\_or\\_a\\_step\\_toward\\_children\\_on\\_demand\\_In\\_Arabic/links/54e18ef70cf24d184b111b41/Three-parent-babies-a-therapeutic-technique-or-a-step-toward-children-on-demand-In-Arabic.pdf](https://www.researchgate.net/profile/Tarek_Kapiel/publication/272295683_Three-parent_babies_a_therapeutic_technique_or_a_step_toward_children_on_demand_In_Arabic/links/54e18ef70cf24d184b111b41/Three-parent-babies-a-therapeutic-technique-or-a-step-toward-children-on-demand-In-Arabic.pdf) (last visited July 22, 2017).

the genes of Leigh Syndrome,<sup>2</sup> and the operation took place under the supervision of an American medical team.<sup>3</sup>

The jurisprudential ruling is based on the published medical description of the issue. The question for this article is: (1) “Does this process of placing DNA from the mother’s (wife’s) nucleus into the egg of a donor with mitochondrial DNA from another woman lead to mixing and overlapping of the lineages of genealogy?”<sup>4</sup> or (2) “Is it like the donation of organs, where a person who donates one kidney to another person has no effect on the overlap of lineages?”

In order to obtain the perspective of Islamic medical specialists on this topic, the researcher contacted via e-mail a large number of Islamic physicians who specialized in gynecology and obstetrics and received medical responses which fell into one of two categories:

1. There is no mixing of genealogy since the traits of the offspring are carried by the nuclear DNA of the mother (wife) and the mitochondrial DNA of the donor does not confer genetic characteristics, or

2. There is mixing of the genealogy, since the traits coded in the mitochondrial DNA of the donor (non-wife) are also transferred to the cells of the offspring.

Each view will be illustrated by quotes from the corresponding medical opinions.

### ***There is no mixing of genealogy.***

The Al-Sabbagh<sup>5</sup> opinion is that the mitochondria are not a part of the transgenic chromosomes which carry the genetic traits, and their function is simply to supply the cell with the energy needed to perform its biological functions. Thus, this type of enhancement carries only the nuclear genes of the mother and father and does not carry any nuclear genes from the donor. Al-Sabbagh stresses that this type of medical treatment is a cure for some medical dilemmas, and it is useful for couples looking for the blessing of procreation as a treatment for mitochondrial diseases. There is no manipulation or addition of nuclear genetic material.

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<sup>2</sup> Acute neurological disorder usually occurs in the first year after birth, a rare genetic disease caused by a malfunction in the Mitochondria, which was named after the British neurologist and psychiatrist Archibald Denis Leigh (1915 – 1998) who described this case for the first time in 1951. See <https://ghr.nlm.nih.gov/condition/leigh-syndrome>.

<sup>3</sup> A private electronic mail correspondence with Dr. Tarik Zamzami, Professor of Gynecology, Faculty of Medicine, King Abdu Aziz University, Jeddah, Saudi Arabia, and member of the Islamic Health Committee for Investigation of Medical Errors in Jeddah, Saudi Arabia, Email: [Tarikzamzami@yahoo.com](mailto:Tarikzamzami@yahoo.com), dated 23/7/2017.

<sup>4</sup> The meaning of mixed genealogy is that the father and mother would be unable to distinguish the child, and in the case of donation of Mitochondria the mixing of genealogies appears in the fact that the child has a donor mother and donor and a nursemaid mother of an incubator, as a father and two mothers.

<sup>5</sup> Dr. Abdel Hamid Sabbagh, Gynecology Consultant and Male Infertility, Email: [sabbaghah@yahoo.com](mailto:sabbaghah@yahoo.com). A private correspondence by email, on 18/7/2017.

This opinion was also adopted by Al Reshoud,<sup>6</sup> who believes that the procedure should be considered as a great achievement that serves humanity. This approach of transferring nuclear genetic material from the mother (wife) allows for the survival of children who would otherwise die due to mitochondrial deficiencies in the mother's (wife's) cells. Such an approach also gives the couple the hope that they would have progeny reflecting the genetic code of both the mother (wife) and father (husband). The genetic material in the mitochondria of the donor replaces the diseased mitochondria from the mother, and although this mitochondrial DNA is passed to the offspring and subsequent generations, Al Rashoud asserts that there is no mixing of genealogy involved.

Dr. Fedda<sup>7</sup> concurred and his rationale is that the mitochondria do not carry genetic information that codes for the form of the body, according to what is currently scientifically known. The genetic information that is transmitted is thought at this point to have little effect on visible characteristics and simply provides for energy production in the cell. When the transfer of the mother's (wife's) nucleus into the enucleated donor egg is performed, the resulting fetus contains a very high percentage of the original father and mother. The benefit derived from this procedure lies in the fact that the fetus survives hopefully free of chronic mitochondrial disease. Fadda believes that the process is similar to the transfer of organs (kidney, liver, heart and valves), does not believe that there is a significant genetic contribution from the donor, and believes that the benefits of elimination of defective mitochondria are significant.

### ***There is mixing of genealogy.***

In contrast to the opinion that there is no significant genetic mixing, Dr. Al-Ramahi<sup>8</sup> points out that mitochondria contain a very small amount of genetic material, and since this mitochondrial DNA is passed on in the offspring of the fetus created during this process, this passing on of the donor mitochondrial DNA results in the mixing of the genealogy even if the percentage is modest. Dr. Al-Awar<sup>9</sup> concurs with this opinion, stating that "although the percentage of DNA taken from the donor mother is very small, the question is not a question of percentage, but rather the issue of controversy is the root change in the function of the cell. This question is most pertinent as the mitochondrial DNA changes the total functioning of the cell. The life of the cell depends on the energy produced by the mitochondria, and this mitochondrial energy production is intrinsic to all functions of the cell. This little amount of mitochondrial DNA taken

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<sup>6</sup> Dr. Firas Al-Reshoud, Assistant Professor of Reproductive Medicine and Infertility, Medical School, The Hashemite University, Zarqa, Jordan, E-mail: Reshoud75@yahoo.com. A private correspondence by email, on 17/7/2017.

<sup>7</sup> Dr. Muin Rashad Fedda, Infertility and Test Tube Babies Specialists, Gynecology Consultant, Email: muinfedah@gmail.com. A private email correspondence on 24/7/2017.

<sup>8</sup> Prof. Dr. Muataz Qasem Al-Ramahi, Professor of Obstetrics and Gynecology, Faculty of Medicine, Jordan University, Jordan, Email: muataz@hotmail.com. A private email correspondence on 17/7/2017.

<sup>9</sup> Dr. Shamsa Al Awar, MD, FABC, FACOG, FRCSC, Chair Department of OB/Gyn, CMHS, College of Medicine and Health Sciences, United Arab Emirates University, Email: sawar@uaeu.ac.ae, a private email correspondence on 8/5/2017.

from the donor mother will affect the entire configuration of the cell and will pass on through the generations.

Al Samhouri<sup>10</sup> also concurs. He pointed out that any intervention which leads to a fundamental change of genetic composition of embryos which is inherited in future generation can be reduced to the overlap of genealogy from the donor and the mother (wife). There is no mechanism to eliminate the inheritance of donor DNA, so Samhouri believes that this procedure is not permissible at all, due to the unavoidability of inheriting donor DNA in future generations, and to the intrinsic role of that donor DNA in the function of the cell.

Professor Nather Hawa<sup>11</sup> concurs that the genetic traits of the mitochondria expressed the embryo are a result of the mitochondrial DNA coding of the genetic traits of the mother who donated the ovum.

Dr. Tariq Zamzmi explained that the process itself requires the presence of a third party (donor) outside the legitimate couple (husband and wife), and this third party presence is passed through subsequent generations. This mitochondrial inheritance is a type of genealogy, a genealogy derived from a third party, out of wedlock. Thus the child born from this process carries genes and genetic traits from the father, mother and donor.

## Second: Position of Muslim Jurisprudence

At the outset it may be asserted that the author cannot address the position of Muslim Jurisprudence on this matter without a brief elucidation of the philosophy of Muslim jurisprudence. I will discuss the preservation of offspring and lineage and the position of Fiqh as a part of the total view of this philosophy; and conclude that the lineage of a person is determined by his father and mother, and this identifies him as the son or daughter of this man and this woman. Actually, the Islamic Shari'ah devoted extreme attention to lineage and honor, and this is manifested in its prohibition of adultery, which is one of the important contributors to the confusion of lineages. Allah says: "And come not near to the unlawful sexual intercourse. Verily, it is a Fahishah (i.e. anything that transgresses its limits (a great sin)), and an evil way (that leads one to Hell unless Allah forgives him)." Quran (17: 32).<sup>12</sup> Moreover, the Shari'ah prohibited child adoption which was prevalent among Arabs before Islam; Allah says: "Call them (adopted sons) by (the names of) their fathers, that is more just with Allah." Quran (33:5).<sup>13</sup> This verse guides me to the conclusion that the imperative of justice is for a

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<sup>10</sup> Dr. Marwan Suleiman Samhouri, Gynecology Consultant and Surgeon, Infertility Specialist, Master's in Gynecology, University of Jordan, previously the University of Jordan Hospital, Member of the Jordanian Gynecology Board, presently has a private clinic, Jebel Al-Hussein, Amman, Jordan, Email marwansamhouri@hotmail.com., a private email correspondence on 17/7/2017.

<sup>11</sup> Dr. Nather Said Hawa, Faculty of Medicine, University of Mu'ta, Jordan Professor in the Gynecology Department, Member of the Royal British College. Email: nshawa2003@yahoo.com. A private email correspondence on 20/7/2017.

<sup>12</sup> Qur'an, 17:32.

<sup>13</sup> Qur'an, 33:5.

man to be ascribed to his father in lineage,<sup>14</sup> and the Shari`ah strongly warns the woman against bringing to the lineage a man's offspring resulting from adultery, and likewise encourages a man not to disavow his true son. It was narrated from Abu Hurairah that he heard the Messenger of Allah say when the Verse of Mula'anah (Li'an) was revealed: "Any woman who falsely attributes a man to people to whom he does not belong, has no share from Allah, and Allah will not admit her to His Paradise. Any man who denies his son while looking at him (knowing that he is indeed his son), Allah, the Mighty and Sublime, will cast him away, and disgrace him before the first and the last on the Day of Resurrection."<sup>15</sup> Moreover, Islam prohibits slander to safeguard lineage, and slander here is to accuse a man or woman of adultery without providing proof. Allah says: "Verily, those who accuse chaste women, who never even think of anything touching their chastity and are good believers, are cursed in this life and in the Hereafter, and for them will be a great torment," Quran (24: 23).<sup>16</sup> There is another verse which indicates the punishment for slander. Allah says: "And those who accuse chaste women, and produce not four witnesses, flog them with eighty stripes, and reject their testimony forever, they indeed are the Fasiqoon (liars, rebellious, disobedient to Allah)." Quran (24: 4).<sup>17</sup>

On the other hand, the Islamic Shari`ah considers the preservation of lineage to be one of its main and necessary aims because safeguarding lineage means the order and balance of human life. In order to achieve this aim the perspicuous Shari`ah laid down clear foundations and advanced a sound paradigm to preserve the lineage. Thus it made marriage to be licit, prohibited adultery, attached importance to corroborating lineages, militated against all that leads to violations, and advanced human life so as to attain the highest degrees of refinement. We may allude to the foremost legislative rules reflecting the importance attached by the Islamic Shari`ah to the preservation of lineage,<sup>18</sup> including witnesses of the marriage contract, where Imam Al-Tirmidhi said: "Matrimony is solely by virtue of witnesses, and none of the earlier generations have disagreed on this point."<sup>19</sup> Thus, the hadith is explicit evidence of witnesses being a necessary condition for the validity of the marriage and aims to document rights including the lineage rights.

Among the other legislative rules is the announcement and publicizing of marriage. Aishah quotes The Messenger of Allah: "Publicize this marriage, and hold it in

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<sup>14</sup> See Al-Qurtubi, Mohammad Bin Ahmad, 'Al-Jami' Li Ahkam Al-Qur'an' (Cairo: Dar Al-Kutub Al-Misriyyah, 1964), Part 14, p.119; and AL-Shawkani, Mohammad Bin Ali, 'Fath Al-Qadir' (Damascus and Beirut, Dar IbnKathir and Dar Al-Kalem Al-Tayyeb,' 1984), part 4, p.301.

<sup>15</sup> IbnBaalban, AlaaEddin Ali, 'Al-Ihsan Fi TaqribSahihIbnHabban' (Beirut, Mu`assassat Al-Risalah, 1988), Part 9, p.418.

<sup>16</sup> Qur'an 24:3.

<sup>17</sup> Qur'an 24:4.

<sup>18</sup> Al-Agha, SuheirSalameh, 'Qawadeh Al-Nasab Fi Du`ullm Al-Wirathah Al-Mu`asser' (Master's thesis, Islamic University, Gaza, 2010), p.9.

<sup>19</sup> Al-Tirmidhi, Mohammad Bin Issa, 'Sunan Al-Tirmidhi,' (Beirut: Dar Al-Gharb Al-Islami, 1998), Part 2, p.403.

the Masjid, and beat the drums for it.”<sup>20</sup> For this reason the hadith is clear indication of the importance of announcing marriage (the beating the drum serves this purpose). Such announcement includes holding it in a public place such as the mosque, in order to cautiously substantiate it, to safeguard lineage (by announcing and publicizing the marriage it becomes publicly recognized). If the marriage were secret and unknown to people then this would lead to a denial of the lineage of the married couple, which would have a negative impact on the offspring in terms of the social and psychological aspects.<sup>21</sup> Actually, the legislation requires the official marriage to be a legal contract issued through an official document from the state, which would confirm the lineage of the offspring based on a civil register, and thereafter the issuance of birth certificates for the children.

Associated with the establishment of the lineage of the children and their relation to the nuptials are rights related to their education, upbringing, and rearing, as well as the rights associated with lineage. For example, the rights of the father, where the parentage of the father implies his guardianship, his right to have the offspring belong to the father after the mother’s custody ends, the right to inheritance in case the son dies before him, and his right to the son to support him financially in case the father needs such and the son is capable. As for the rights of the mother, establishing the lineage of the son to his father precludes the possibility or accusation of adultery, and removes dishonor from her and her family. As for the rights of the son or daughter, establishing the lineage means the right to support, inheritance, and precludes shame for being the illegitimate child of an adulterous relationship.<sup>22</sup>

In view of the philosophy of the preservation of lineage in Muslim jurisprudence, and not in light of the opinions of a group of specialists in the medical field, I have concluded that the specialists in this medical field are divided into two groups: (1) a group that believes is no confusion of lineage, and (2) a group that believes the Three-Parent IVF is a confusion of lineage. The author has subscribed to the medical opinion that the Three-parent IVF does lead to a confusion of lineage, and hence that the Three-Parent IVF is prohibited in Muslim jurisprudence.

The author has perused some of the fatwas of some of the religious centers in Muslim countries, and has actually communicated with a number of centers including the Fatwa Department of the Hashemite Kingdom of Jordan, the Palestinian Department of Fatwa, and the Fatwa Department of the Hashemite Kingdom of Jordan, which declined to respond. Due to the lack of the practical need particular to this matter, the Fatwa Department found that Three-Parent IVF is a new and significant development, which

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<sup>20</sup> Al-Tirmidhi, Mohammad Bin Issa, ‘*Sunan Al-Tirmidhi*,’ (Beirut: Dar Al-Gharb Al-Islami, 1998), Part 2, p.390.

<sup>21</sup> See AL-Agha, SuheirSalameh, ‘*Qawadeh Al-Nasab Fi Du’ullm Al-Wirathah Al-Mu’asser*’ (Master’s thesis, Islamic University, Gaza, 2010), p.11; and Ibn ‘Ashour, Mohammad Al-Taher Bin Muhammad, ‘*Maqasid Al-Shari’ah Al-Islamiyyah*’ (Qatari Ministry of Waqf and Islamic Affairs, 2004), Part3, p.430.

<sup>22</sup> Al-Agha, SuheirSalameh, ‘*Qawadeh Al-Nasab Fi Du’ullm Al-WirathahAl-Mu’asser*’ (Master’s thesis, Islamic University, Gaza, 2010), p.7.



demands that the Jurisprudence academies consider whether in the Muslim World, the tools of collective *ijtihād* (judgment) should be utilized to give a conclusive ruling in this matter, and discuss the interests and evils associated with it.<sup>23</sup> The fatwa of the Palestine Fatwa Department, through the Higher Fatwa Council in Palestine, deliberated on the matter of artificial fertilization and issued its decision number 2/4 on 13/6/1996. While it prescribed parameters and restrictions for permitting artificial fertilization including: the sperm should be from the husband, and the ovum from his wife, the Department found that this technique is inconsistent with those parameters and is hence Islamically prohibited in order to avoid the confusion of lineages.<sup>24</sup>

In addition, the Islamic Fiqh Academy analyzes the test tube babies case through decision Number 16 (4/3) (1/ dated 16/10/1986). In this decision, the International Islamic Fiqh Academy convened in the third conferee session in Amman the capital of the Hashemite Kingdom of Jordan from 11/10/1986 to 16/10/1986. After reviewing the studies presented on the topic of artificial fertilization (test tube babies), hearing the explanations and expositions of specialists and physicians, and after deliberation, the Council concluded that the methods of artificial fertilization recognized these days are seven, including those that are Islamically prohibited and completely illicit due to the confusion of lineage it causes and the loss of maternity as well as other legal pitfalls. The prohibited method effects fertilization between the sperm taken from the husband and an ovum taken from a woman who is not his wife, then inserts it in the womb of his wife. The general ruling is that this is prohibited, because the Fiqh Academy permits only two techniques for artificial fertilization, stating that there is no objection to resort to them upon need while emphasizing the necessity of taking all the necessary precautions, namely for a sperm to be taken from the husband and an ovum from his wife, and the fertilization would take place externally, and then the fertilized ovum would be transplanted into the womb of the wife.<sup>25</sup>

In this argument, we have given precedence to the medical position stating that the Three-Parent IVF leads to a confusion of lineage. What about the medical position stating that the lineages are not confused, and in that case what is the position of Islamic Law? This author responds that the technique remains prohibited based on the two jurisprudential principles. First, if the licit and illicit are present then the illicit takes precedence, for what is permissible is what God has allowed, and what is prohibited is what God has considered illicit. Second, if what is licit and illicit are present in a particular matter, then prohibition takes precedence, given that the illicit is prohibited in all

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<sup>23</sup> Fatwa Department of the Hashemite Kingdom of Jordan, Fatwa Number 77670, dated: 2/5/2017, published in the website of the Department: <http://www.aliftaa.jo/ShortAnswer.aspx?Question-Id=77670&AnswerId=a5b51ddd-c940-40b5-89a1-3f6e51bd3031>.

<sup>24</sup> The fatwa was received by the author by email by virtue of an official letter from the Department Number 1025/2017/11/2, dated 14/5/2017.

<sup>25</sup> See the decision on the website of the Academy: <http://www.iifa-aifi.org/1661.html>, (last visited July 21, 2017).



cases.<sup>26</sup> In Three-Parent IVF, the sperm is taken from the husband and the ovum taken from the wife which is permissible, but when we take a part of the ovum of another woman, then what is licit and what is illicit are both present, and it would be prudent to avoid it as is espoused in Islamic fiqh, and also to avoid contravening the Shari'ah in case of inability to know the Islamic ruling.<sup>27</sup>

### Third: The Position of Emirati Law

The United Arab Emirates (UAE) is seeking to raise the standards of health services to the highest levels of quality in accordance with the best international standards in effect in this field. A federal law was enacted regulating the activity of the fertilization centers in the UAE, namely Federal Law Number (11) of 2008 concerning the licensing of fertilization centers, and it defines the suitable legal framework for regulating the activity of these centers which are active in one of the important fields of modern medicine. The UAE is among the few Arab countries that have enacted legislation in this field, whereby conditions and parameters of licensing fertilization centers are established, as well as the provision of health services within the framework of medical assistance for reproduction.

This legislation includes several levels. The first is that of licensing, whereby the law stipulates the establishment or operation or management of a fertilization center. This requires obtaining a license from the ministry or the local health bodies in order to ascertain the fulfillment of the necessary legal conditions and parameters for operating in the field of medically aided reproduction. This provision includes the medical, technical and administrative cadre, including the technical specification and the availability of medical equipment, whereby the state ensures the public purpose to guarantee the right to receive health services in accordance with the best international standards.

The second level is that of supervision, monitoring, and coordination between the health bodies in the country, whereby the law has stipulated the creation of a national committee to address these important matters. The fertilization centers must be affiliated with various health bodies and hence it is necessary to create a mechanism at the national level to oversee these centers in the various parts of the country and to monitor their activity. On this basis the pivotal role of this committee is principally a coordinative role, whereby it includes in its membership representatives of all the health bodies in the country, including the private sector, in addition to specialists in this field, whether from among physicians or professors in schools of medicine and health sciences.

The third level pertains to the level of practice whereby the law has precisely defined the various methods of reproductive aid which may be practiced at the fertilization

<sup>26</sup> See Al-Zuheili, Mohammad Mustafa, '*Al-Qawa'ed Al-Fiqhiyyah WaTatbiqatihaF'ilMadhaheb Al-Arba'ah*' (Damascus: Dar Al-Fikr, 2006, Part 2 ,p.695), and Abdullah, YahyaMousa, '*Al-Qawa'ed Al-FiqhiyyahF'ijtima'a Al-Halal W'al Haram WaTatbiqatiha Al-Mu'asserah*' (Doctoral dissertation, Faculty of Shari'ah, University of Jordan, 2004), p.50. See Shaker, Munib Bin Maahmoud, '*Al-'AmalB'ilIhtiyatF'ilFiqhAl-Islami*' (Riyadh, Dar Al-Nafaes, 1998), p.48.

<sup>27</sup> Sama'i, Mohammad Umar, '*Nadhariat Al-Ihtiyat Al-Fiqhiy, An Applied Study*,' (Doctoral Dissertation, Faculty of Shari'ah, University of Jordan, Jordan, 2006), p.19.

centers. The definition is subject to modification so as to be open to any new techniques that are internationally recognized and are proposed by the supervision and monitoring committee. Those techniques include aspects related to the fertilization process and the method of dealing with ova, sperm and embryos, and the method of preserving them.

The fourth level it is the Islamic Shari`ah, whereby this law accords with the rules and precepts of the Shari`ah, and guarantees the use of the techniques of medical aid for reproduction in accordance with the best practices in effect in the modern medical field, while respecting the Shari`ah rules governing this sensitive field from the religious aspect. This includes ensuring avoidance of confusion of lineages, for the law delineates precisely the conditions for fertilization of an ovum and the methods of preserving and dealing with embryos. This is in addition to the level of compliance with the laws in force: out of consideration for the privacy and particularity of medical assistance for reproduction and its sensitive nature at the level of the rights of persons and at the level of the legal and Islamic precepts prevalent in society. The law stipulates administrative and penal penalties which may be imposed on the centers which violate the stipulations of national legislation. The UAE must put in place integrated legislation that encompasses the fertilization centers beginning with licensing, the medical technique, and the provision of medical services, and culminating with the application of suitable penalties in case of violation of the law.<sup>28</sup>

Concerning the position of Emirati Law on this matter, and upon reflection by the author on Emirati Law Number (11) of 2008 concerning the licensing of the fertilization centers in the State, and the decision of the Council of Ministers by the executive order associated with the Law of Licensing the Fertilization Centers in the State Number 36 of 2009, the author did not find an explicit text addressing this question. However, a researcher may extrapolate from various legal stipulations regarding this question, including the general restrictions and parameters related to practicing the technique of aiding reproduction, where Article Number 9 of the Law deals with those restrictions. These considerations include: (1) the aid to reproduction as the only available means for reproduction, after it has proven impossible for pregnancy to materialize by normal sexual intercourse for a period not less than one year; unless there is a prior diagnosis of infertility whereby there is no need for waiting for a period of one year; (2) the aid to reproduction shall take place with the written approval of the married couple; (3) the husband must acknowledge the presence of a marital relationship by showing an official marriage certificate at the time of fertilization and upon inseminating the ovum; and (4) the method of aiding reproduction should not involve a risk to the life of the wife or considerable harm to her health in accordance with what is medically recognized, which fact shall be attested to by a certificate issued by a specialist physician.

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<sup>28</sup> See the article by Dr. Amin Hussein Al-Amiri, the Assistant Undersecretary for Public Health Policy and Licenses, under the heading: 'The Emirates is on a Pioneering Path in the Fields of Modern Medicine and Fertilization,' dated 23/12/2015, at website: <http://www.araanews.ae/195752>, (last visited July. 21, 2017).

What is evident to the author is that the question of Three-Parent IVF violates the clause which stipulates that “the husband shall affirm the presence of a marital bond by showing an official marriage certificate at the time of fertilization and upon the insemination of the additional ovum,” for the donor woman is not a wife, and therefore this constitutes the first violation of the law by Three-Parent IVF.

In addition, Article 10 of the law stipulates a set of prohibitions applicable to the subject at issue, namely Paragraph One which states “fertilization shall take place between a sperm taken from the husband and an ovum taken from another woman and thence the fertilized ovum shall be implanted in the womb of his wife.” This is further confirmation of the prohibition of Emirati Law of this technique. Actually, the Law does not restrict itself to prohibition, but prescribes a punishment for those that partake in such technique where Article 29 of the Law states that one who violates a number of articles, including Article 10 shall be punished by imprisonment for a period not less than two years and not in excess of five years and a fine that is not less than two hundred thousand Dirhams and not in excess of five hundred thousand Dirhams or by one of those two punishments, and Article 33 added that the court may in case of conviction rule to close the center.

## Conclusion

This article elucidates the position of Muslim jurisprudence and law on the matter of Three-Parent IVF. In this article, Three-Parent IVF is defined as the insertion of Deoxyribonucleic acid (DNA) from the ovum of the mother (wife), who is exposed to the mitochondrial transformation, and thence placing that DNA in a healthy ovum from a third party donor, and thus the ovum is fertilized by the sperm of the father (husband) by conventional means inside the laboratory. I conclude that this technique departs from (1) the principle of prohibiting the confusion of lineages, (2) the principle of taken precautions, and (3) the principle of prohibition when the licit and the licit are present in combination in a medical technique. Thus, after consideration of these principles, I conclude that Muslim jurisprudence prohibits this technique. As to Emirati Law, there is no explicit prohibition, but there is a set of legal provisions that are relevant and applicable, which indicate that Emirati Law also prohibits this technique.

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