

The dilemma of assisted reproduction in Iran

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Abstract

Assisted reproductive technologies (ARTs) have spread at a surprising speed in Iran, since their introduction three decades ago. Currently over 75 clinics offer fertility treatment, in all its forms, throughout the country. The practice of ARTs in Iran, which is an Islamic state, was made possible, initially, through the endorsement of leading religious authorities. While the use of these biotechnologies is now viewed more as a medical technology, social and cultural norms and practices remain an important factor in their acceptance. The third party donation of sperm and egg remains particularly problematic, especially in the cases of male infertility and sperm donation, and the practice has had unanticipated outcomes for kinship, gender and for the children born from such technologies. In this paper I examine the process by which ARTs have been legitimized and conclude that, so far, these modern technologies have not altered, profoundly, the attitudes of infertile couples, towards procreation, but they have become instrumental in the users' hands to perpetuate their understanding of what constitutes kinship and relatedness.

Key words: Assisted reproductive technologies, barriers, *ijtihad*, infertility, third party gamete donation.

Introduction

Assisted reproductive technologies (ARTs) reached Iran soon after their practice started in their countries of origin, and were received with open arms. Since their introduction, Iran has witnessed a rapid flourishing of infertility treatment centres in the major cities, and the country currently has over 75 such centres, which range from private to semi-sponsored to almost free public clinics. Between them these centres offer all forms of infertility treatment including third party donation of sperm, egg and embryo, and surrogacy. Some of the leading clinics also offer PGD sex selection and one works on stem cell research. As Marcia Inhorn (2005), the leading anthropologist on ARTs in the Muslim Middle East, mentions "Iran is definitely in the lead among the Muslim countries in the Middle East in the application of these [ARTs] technologies". In general, the use of ARTs in the Muslim Middle Eastern countries has been made possible by the approval of religious leaders. In Inhorn's (2006) words "in all of the Middle Eastern Muslim countries, Islamic *fatwas* have profoundly affected the practice of IVF in ways that are not commonly seen in the West". While the

application of ARTs in the West is under the scrutiny of various medical, legal and ethical committees, in the Muslim countries of the Middle East the responsibility for such endorsement has remained largely with religious leaders regardless of whether the state is secular or theocratic. "Infertile couples in these countries are usually extremely concerned about making their test-tube babies in the Islamically correct way. To that end, they seek 'official' Islamic opinion on the practice of IVF in the form of a fatwa" (Inhorn, 2006). The religious leaders in these countries have therefore taken centre stage and play an active role in legitimising the use of ARTs. However, in doing so, the Sunni and Shia senior clerics have reached different conclusions and while the Sunni have banned all forms of third party donation, the Shia have allowed these by using some of the built-in mechanisms available to the Shia that have paved the way for the legitimisation of ARTs without breaking any divine rules (Inhorn and Tremayne, 2012).

In this article I shall briefly explain the process of legitimising ARTs, especially third party donation of sperm and egg, and argue that although no barriers exist for the use of third party donation, the path towards total success has not been a smooth one for

either the practitioners or the users of these technologies. I shall illustrate that the speed with which ARTs initially entered the market, combined with the high demand for them by infertile couples, forced the ruling religious leaders to engage in the debates on whether and how the practice of ARTs should be allowed, and after much deliberations some of the leading clerics issued their verdicts in forms of fatwas to allow their use. However, the legitimisation of ARTs was based on the interpretation of the Qur'an, and focused on the religious aspects of these practices, to ensure that they are carried out strictly within the Islamic rules. In legitimising ARTs the leading Muslim scholars focused on theorising the impact and ramifications of ARTs on reproduction, family and kinship, which are considered foundational, sacrosanct institutions and the guiding principle of human social organization. In doing so, the senior clerics, did not foresee the future outcome of the practices, and underestimated the agency of the medical practitioners and the infertile couples, in the way they interpreted and used the fatwas. In practice, the responses of the users of third party gametes, inadvertently, proved a direct challenge to cultural norms and kinship rules, the very institutions, which the religious leaders were anxious to protect, as I shall discuss briefly in this paper.

Methodology

The main sites of the research are Tehran and Yazd, in central Iran. Also, a considerable amount of data has been collected from in-depth research among Iranian women asylum seekers in the UK. These women had undergone third party gamete donation in Iran, and had to flee the country as a result of extreme violence inflicted on them by their husbands. The main method used throughout was that of participant observation and in-depth interviews at the clinics. I spent several months living with a family in Yazd, who I revisited several times, and developed a large network of contacts. I also worked in one of the main private hospitals in Yazd (Mojibian), which has a fertility treatment clinic, and met with infertile couples who allowed me into their homes and larger family networks. I carried out interviews with the doctors in both the Mojibian clinic and with Dr Aflatounian, the first medical practitioner to introduce IVF to Iran. In Tehran, I worked in three government sponsored clinics and two private ones, where I interviewed the infertile couples as well as the medical staff, psychologists, ethicists, statisticians and nurses. My work with Iranian women asylum seekers, between 2003 and 2010, provided a wealth of data, which even as an anthropologist doing fieldwork, one is not necessarily privy to. The

purpose of this paper is to provide an overview of the practice of ARTs in Iran; it is not an examination of the Islamic context, which legitimized them.

Assisted Reproductive Technologies

The reasons for and the process of legitimising ARTs in the Muslim Middle East have been documented extensively elsewhere (Inhorn, 2005, 2006; Inhorn and Tremayne, 2012; Clarke, 2006a, 2006b, 2009; Serour, 1993; Tremayne, 2009, 2012, 2012b). A brief explanation is that the way the Muslim countries of the Middle East have approached the practice of ARTs differs between the Sunni and the Shia. The Sunni have argued that allowing the practice of third-party donation of gametes would lead to confusion in a family's lineage (*nasab*), which forms the foundation of the Muslim family, and would be equal to incest or adultery and, therefore, a threat to the stability of social relations (Inhorn, 2005; Clarke, 2009; Tremayne, 2009). The Sunni, therefore, have banned all forms of third party donation.

The Shia religious leaders in Iran, on the other hand, have been able to find solutions to legitimise third-party donation without breaking any of the Islamic rules. In doing so, they have focused on an in-depth examination of what constitutes lineage (*nasab*), and whether the practice of ARTs with all its ramifications would confuse the line of lineage. To do so, the senior Shia clerics resorted to independent reasoning (*ijtihad*), and concluded that certain forms of third-party donation could be allowed without breaching any divine rules (Inhorn and Tremayne, 2012). ARTs are therefore currently practiced in Iran with the full approval of the ruling religious leaders, although the use of donor sperm remains a more contentious issue, and its practice is limited. However, not all senior Shia clerics in Iran are in agreement with the interpretations that have led to legitimising third-party donation. Similar to the Sunni religious leaders, the opponents of such practices in Iran remain uncompromising in their interpretations of the Qur'an and forbid the use of third-party donation. And, similar to their Sunni counterparts, the Shia clerics also agree that no third party donation could take place outside the marital union. The legitimate solution to third party donation was therefore found in temporary marriage, a practice unique to the Shia, and through independent reasoning (*ijtihad*). It is this individualistic practice of *ijtihad* that has paved the way for the Shia to engage dynamically with most forms of biotechnologies and in the case of ARTs has resulted in the development of a wide diversity of opinions among Shia *marja's* (sources of emulation). These opinions can sometimes disagree and take opposing views on the inter-

pretation of the Qur'an, which has historically led to senior *marja's* forming their own groups of followers. However, this diversity has also led to considerable "flexibility" for the Shia in the regulation and practice of ARTs. (Inhorn and Tremayne, 2012).

Soon after third party donation was introduced to Iran, several Shia scholars engaged in exploring its legitimacy and provided their views on it. These differed fundamentally and ranged from rejecting it altogether, to others endorsing it in part and conditionally. One example of such deliberations is a pioneering conference organized by Dr Akhondi, the Director of one of the leading fertility clinics, the Avicenna Research Centre. The conference included experts from various disciplines and became a landmark for pushing the agenda forward and influencing the future decision-making processes. It was during similar gatherings that a solution was found for the third party donation of sperm and egg, using the Shia practice of temporary marriage.

Third party donation and temporary marriage

Temporary marriage, *sigheh* in Persian, is a form of marriage whereby a man and a woman agree to enter into marriage within a time limit, which can be from one hour to 99 years (Haeri, 1989). In the context of gamete donation, to receive gametes legitimately from a third party, if the wife is infertile, Islam permitting polygamy, the husband will marry the egg donor for one day, to receive her egg legitimately, without any bodily contact taking place between the two. Egg donors should be widows or divorcees and ideally already have children of their own. Once the egg has been donated, it is fertilized with the husband's sperm, outside the womb, and the embryo is planted inside the infertile wife's uterus. The Supreme Religious Leader of Iran, Ayatollah Khamenei's fatwa, issued in the late 1990s, went even further and did not make any mention of temporary marriage. It stated, "donation is allowed as long as no 'touch' or 'gaze' takes place". It also clarified the position of the biological and social parents vis-à-vis the donor child (born from third party donation) as follows: "both the egg donor and the infertile mother must abide by the religious codes regarding parenting. Thus, the child of the egg donor has the right to inherit from her, since the infertile woman who received the eggs is considered to be like an adoptive mother" (Khamenei, 1999). In the case of the husband's infertility, the couple usually has two options. Either the wife divorces her infertile husband, as she cannot be married to two men at the same time, waits for three-and-a-half months (*ede*h), to ensure she is not pregnant, and enters into temporary marriage with the sperm donor, without any sex-

ual contact taking place between them, and receives his sperm, which is fertilized with her egg outside the womb and is planted in her uterus. She then remarries her own husband. Or, the couple opts for receiving an embryo from a married couple, which will be planted inside the wife's uterus. Temporary marriage is no longer taking place in every case, and many clinics do not concern themselves with what they consider to be a formality, and the infertile couples problem, which should be solved between the couple and the donor outside the clinic.

Temporary marriage for women with infertile husbands has proved complicated and lengthy, and is rare despite some known examples. Couples in this position usually opt for embryo donation. In the case of sperm donation, according to Ayatollah Khamenei, the child takes the name of the social father rather than the sperm donor. However, as with egg donation, the child inherits from his biological father. These rulings however, are not always followed in practice, and gradually the clinics have moved to making gamete donation anonymous, or confidential, depending on whether the clinic is private or public. While the approval of egg donation has not raised any objection, the endorsement of sperm donation has been met with the strong objection of some senior clerics as well as a large majority of conservative groups in society.

The ethical, moral and legal problems that have emerged from third party donation were not initially anticipated. All three parties engaged in gamete donation – the medical practitioners, the donors and the recipients – are frequently faced with unanticipated situations, ranging from the right of the child, to claims of ownership by the donors, to financial disputes and emotional problems. Moreover, in the absence of clear religious instructions, all parties involved, resolve the problems as best they can.

Embryo Donation

With the introduction of embryo donation it became clear that *ijtihad* and *fatwas* alone could not justify its practice and a law was passed in August 2003, allowing embryo donation. Although this law also remains vague or insufficient in some areas, it is not nearly as problematic as the cases of sperm and egg donation, which have led to totally unexpected forms of donation to take place. To cite but a couple of examples, infertile women prefer to resort to the donation of their sisters' or other female relatives' egg, which will be fertilized with their husband's sperm and then transferred to their wombs. Following the Islamic rules of incest and adultery, such action, in theory, would be considered adultery, as it would be similar to the husband impregnating his

wife's sister. However, the fatwas, specifying, "as long as no touch or gaze takes place, donation is allowed" (Khamenei, 1999, among several other senior clerics), have led infertile couples to proceed with donation from their close relatives, without breaching any religious rules. Furthermore, based on the same fatwas, cases of brothers giving sperm to their sister's infertile husband, to be fertilized with their sister's egg, have come to the fore, which has taken doctors by surprise too, but since the request for such practices are legitimate, they do take place (personal interviews with doctors at clinics; Garmaroudi Naef, 2012). The biological and genetic implications of such practices notwithstanding, from the social and cultural point of view, in theory, the making of embryo between a brother and his sister, is a breach of the most elementary rules of kinship and equivalent to incest.

Surrogacy

Surrogacy has also been practiced in Iran since 2002 and initially remained limited in its application due to a shortage of surrogate mothers. In the early stages, only relatives were prepared to act as surrogate mothers, but, a decade on, in spite of many siblings, relatives and friends still acting as surrogate mothers, an increasing number of women are coming forward to act as commercial surrogate mothers (Garmaroudi Naef, 2012; Gestational surrogacy, 2011). So far, no separate law has been passed on surrogacy and permission from the courts, which use the same law as the one for embryo donation as their point of reference, is sufficient.

Stem cell research and PGD sex selection have also been allowed through fatwas, and are limited in their application (Saniei, 2012).

Facilities and barriers to ARTs

From the preceding it is clear that both the public and private sectors in Iran have made a considerable amount of provisions for infertility treatment. Many public hospitals include fertility centres, which are either free of costs or are low cost. To make the treatment more accessible to poorer couples, a bill has been passed by the parliament for the provision of medical insurance for infertility treatment, and infertility is no longer classified as cosmetic surgery, but is recognized as a form of disability. However, the public hospitals are limited in the range of the services they offer, and mainly treat female infertility. Even poorer infertile couples prefer to use private services, if they can cover the fees. In such cases the infertile couple's kin group often pull their resources together to provide the necessary funds for

treatment. For example, parents or brothers sell their car or mortgage their house or other belongings, which they badly need themselves. There are also several charitable organisations, which are actively engaged in providing free treatment for infertile couples. But, in spite of substantial financial provisions, and other forms of support, the cost of ARTs remains a major constraint to infertile couples seeking treatment, even though this is low in comparison to many other countries, which attracts infertile couples from other Muslim countries.

Cultural norms and practices can also act, not only as barriers to the use of ARTs, but also lead to problems afterwards. Infertility remains a major stigma in spite of the efforts of various authorities to educate people about the biological facts of reproduction. Male infertility in particular is more problematic and studies show that infertile men go to great length to deny or hide their infertility. In one study an infertile man asked his wife to take the blame for the infertility and threatened to divorce her unless she agreed to do so (Abbasi-Shavazi, 2008). Other studies show that many infertile men have used donor sperm secretly, not even informing their wives, because they did not want to admit that they were infertile. The occasional discovery of the secret use of donor sperm has led to serious violence inflicted by men on their wives and the children (Tremayne, 2012). Violence towards women, in cases of male infertility, is so widespread that two leading clinics have launched their own research on violence in relation to infertility, and one of them has made a documentary on the subject (personal communication, 2011).

Conclusion

The flexibility of the Shia practices played an important part in allowing the adoption and accommodation of ARTs, in the early stages of their introduction. The fatwas endorsing their use were the result of senior clerics' lengthy engagement with other religious and secular experts, and through resorting to *ijtihad*. These were based on Islamic ethics, and proved above questioning by secular legal frameworks. While the fatwas initially played favourably into the hands of both the medical practitioners and the infertile couples, their inadequacy in dealing with emerging ethical and legal problems became apparent over time. The problems ranged from the conflicts arising as a result of gamete donation between siblings and close relatives, to disputes between the donors and recipients of gamete, to financial disagreements between the donors and recipients of gamete, among other issues. Furthermore, the impact of ARTs on the donor children went unaddressed, the assumption being that once a child

was born, all will be well and the family will become a happy one. The responses of the medical practitioners and the infertile couples to the unresolved and complex emerging situations were to focus each on their own priorities, which seemed to be opposite to each other. The medical practitioners, especially in the private clinics, tried to take control of the situation by increasingly keeping the donors of gametes anonymous to avoid future problems. Such action was in direct contrast to the initial fatwas, which emphasized that the child born from a donor gamete has to inherit from his biological parents. The infertile couples, on the other hand, showed that their priority laid in the continuity of their lineage and focused on the choice of the donors, which, whenever possible, included their close relatives, and thus ensured the 'purity' of their lineage, by making their own reproductive decisions.

The data from the larger study (mentioned under the Methodology heading) also supports the finding that the use of ARTs has not altered the old norms attached to reproduction, and that the deeply rooted values on fertility/infertility, have been reinforced, rather than dislodged, through the possibilities offered by these state of the art reproductive technologies.

Finally, while Iran seems to be ahead of most countries in the world in its coverage and legalisation of ARTs – considerable services and facilities, both public and private, have been provided – the main obstacles to better and proper use of ARTs, in addition to financial constraints, remain social and cultural norms and values related to procreation.

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