

TO BE OR NOT TO BE: ARE CRYOPRESERVED EMBRYOS PROTECTED UNDER THE SHARĪ AH?

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ABSTRACT

One of the main aims of the Sharī ah (*maqāṣid al-sharī ah*) is the protection of human life (*hifz al-nafs*). Advances in medical science have similar aims and have created technology to assist infertile couples to overcome their infertility. One of the technologies developed to further simplify this process is the ability to freeze excess embryos to be stored for long periods of time through cryopreservation. This technology allows infertile couples to use these embryos when they opt for treatment not only once but multiple times. Despite its benefits, the cryopreservation of embryos could bring about several legal issues. This study focuses on the legal status of cryopreserved embryos in two situations. The first is in the event of divorce between the parties and the second is in the event of death of one or both of the parties. The main concern in these two situations is does the couple have full authority to decide what happens to their embryos, even to the extent of allowing them to perish? Are cryopreserved embryos protected under the Sharī ah? This paper analyzes the sanctity of human embryos within the Sharī ah and legal frameworks in selected Muslim countries, with particular emphasis on issues of right to life and their potential legal repercussions on human society. In applying a comparative approach, this paper aims to shed light on the ethico-legal complexities surrounding cryopreserved human embryos under the Sharī ah.

Introduction

Throughout human history, religion and science have collectively aimed to minimize harm and safeguard the well-being of humanity. This shared intention is most evident in the joint commitment to protecting human life, considering it a prime objective. Notably, the paramount interest of every human being is the right to life, which holds priority over other rights. Accordingly, the 20th century witnessed the most significant and life-revolutionary change in medical science, introducing assisted reproduction technology (ART), including the cryopreservation of human embryos.

The use of preserved human embryos plays a vital role in infertility treatments, enhancing the efficiency and safety of ART. Moreover, this technique increases the chances of pregnancy and reduces pain and multiple pregnancies. Cryopreservation has gained acceptance among both infertile and fertile couples (Al-Bar & Chamsi-Pasha, 2015). Despite its benefits, this practice raises ethical and legal concerns. Key considerations in this discourse include whether cryopreservation is exclusively permissible for infertile couples or if its application extends to all individuals. Additionally, there is a need to address potential limitations on the use of this technology. Other issues include, how long would a preservation period be suitable? What is the legal position of the frozen human embryo in the context of the right to life? Moreover, who has authority over its use in cases of divorce and the death of a party or parties?

While extensive work exists on the embryonic development of humans, there is not much discussion on the legal position of the human embryo (Haneef, 2011). Further, although literature exists on cryopreservation technique and its use (Fasouliotis & Schenker, 1996), there is a dearth of discourse regarding its implications in cases of divorce or the demise of involved parties. Some authors discussed ART-related issues and highlighted cryopreserved reproductive material but did not denote the legal position of human embryos in divorce or death cases (Al-Bar & Chamsi-Pasha, 2015). A few scholars attempted to discuss egg or sperm freezing but skipped the debate on human embryo freezing and its status under the right-to-life principle (Alawi, 2019). Finite learning can be seen regarding the ethical status of human embryos, but the events of divorce and death remain unclear (Ayeni et al., 2023). On the other hand, Sharī'ah literature on this subject has not been explored properly. This paper seeks to address these critical gaps in legal research, specifically focusing on the legal status of cryopreserved human embryos.

The primary legal concerns are not on the acceptability of freezing but instead relate to specific inquiries on its legal status, utilization in cases of separation, posthumous use, disposal, storage duration, and other related matters. This study focuses on the issue of the status of a frozen embryo in divorce or death cases, particularly on the authority of couples regarding the use or termination of the preserved embryo, which invokes the principle on the right to life. Human embryos are considered the basic origin of human life, however legal and juridical studies have not clearly examined whether or not the right to life extends to a preserved human embryo. To that end, this paper analyses the sanctity of human embryos within the Sharī'ah and legal frameworks in selected Muslim countries.

Due to the nature of the subject, this research opted for a qualitative approach and utilized books and writings on Islamic law as the primary sources for gathering information. The study relied on library research to gain an understanding on the opinion of Muslim jurists on the subject matter. In this process, a sociological study of Islamic jurisprudence is preferred, which engages arguments from both opponents and proponents. The collected data is thematically categorized and then further examined using the SWOT analysis method. This assisted in the assessment of diverse opinions on the preservation and protection of human embryos, with a specific focus on the right-to-life principle. Further, this study analysed the ethico-legal position of frozen embryos in situations like divorce and death, highlighting the role of the couple in these scenarios. The study derived rulings from primary sources, including the Qur'an and Sunnah, and subsidiary sources such as *qiyas* and *maslahah mursalah* (public interest).

Essentially, the paper is structured into several parts. The first section lays out the terminological discourse, defining cryopreservation, human embryos, Sharī'ah, and the right to life. The subsequent part delves into the question of the sanctity of the human embryo under Sharī'ah, discussing juristic views on the cryopreserving approach of ART treatments. The final part analyses the position of the frozen embryo and the rights and responsibilities of the couples in divorce and death scenarios. The paper concludes by suggesting potential avenues for future research in this domain.

Terminological Discourse

Cryopreservation

The cryopreservation process has been used in ART treatments to preserve reproductive material (sperm, egg, and embryo) for later use (Wurmbrand, 1986). Literally, the term "*cryopreservation*" is a formation of two words: the Latin *cryo*, which means "*icy cold*" or "*frost*" and the second word is "*preservation*" that means the act of keeping something the same or of preventing it from being damaged (Cambridge Dictionary, 2024). In essence, the word cryopreservation simply means preserving cells and tissues (biological things) by freezing in liquid nitrogen (Jang, 2017). Primarily two methods are utilized for the cryopreservation of oocytes (eggs) and embryos: freezing and vitrification, differing in the cooling rate and the specific procedure employed (Gupta, 2010).

Human Embryo

The term "*embryo*" conveys the concept of the initial or undeveloped form of a biological entity (Merriam-Webster Dictionary, 2023). In the context of human reproduction, this term is traditionally applied to denote the early stages of prenatal development, specifically up to the end of the seventh-week post-conception (Marcovitch, 2005). The Malaysian Ministry of Health adopted the standard definition of embryo in the National ART Policy 2021 as the biological organism resulting from the development of the zygote until eight completed weeks after fertilization, equivalent to 10 weeks of gestational age (Ministry of Health, 2021).

Human reproduction is the result of several stages, as illustrated in the Qur'an verses that endorse the embryonic development of humans: *nutfah* (drop), *alaqah* (clot), *mudghah* (tissue), *'azm* (bone), and *yaksu lahman* (flesh) (The Qur'an 23:12–14). This verse initiates fetal development in stages of *nutfah*, *'alaqah*, and *mudghah*. The question is: which term is equal to the medical term human embryo? The Quranic studies draw upon the comprehensive depiction of embryological evolution, wherein the term "*nutfah*" signifies a minute drop of fluid that transforms an "*alaqah*". The latter one is equated with the embryo due to its connotation as a clot of blood or a leech. This stage, around days 7 to 24 of development, is similar to a leech attaching itself to the skin, both in how it sticks and gets nourishment through a blood connection when the human embryo attaches to the uterus lining (Zindani, 1994). Notably, Islamic jurisprudential literature use the word *janīn* (literally "*hidden*") denoting an unborn child for all stages. Like medical jurisprudence, Shari'ah literature needs to be explored to distinguish between an embryo and a fetus (Ghaly, 2014). In practice, misapplication of terminology may cause confusion in the rulings of the human embryo under the Shari'ah.

Shari'ah

Conceptually, "*Shari'ah*" signifies the comprehensive set of rules ordained by God and conveyed through His Prophet (PBUH) to His servants for belief and practice, ultimately leading to prosperity in this world and felicity in the hereafter (Al-Tantawi, 1987). Furthermore, the laws of the Shari'ah aim to guide people towards a good and balanced way of life. According to scholars like Ibn Ashur, this is done by preventing harm (both perceived and real) and by promoting benefits in life (Ibn 'Ashūr, 1998). Notably, the *fuqaha* (Muslim jurists) participate in contemporary discussions concerning the right of abortion and the child's right to live, representing the ongoing discourse between "*pro-life*" and "*pro-choice*" perspectives.

Right to Life

In Islamic teachings, the sanctity of a human life is held in the highest regard, and it is strictly forbidden to take the life of anyone except in accordance with the law. The protection of the human embryo under Islamic law is a topic of ongoing debate among Muslim scholars. In general, Islamic law unequivocally prohibits abortion that means allowing the embryo or fetus to fully develop and be born alive is viewed as a profound manifestation of respect for the fundamental right to life (Ibn Qudāmah, 1975). Additionally, in cases where a pregnant woman is found guilty of a capital offense, Islamic jurisprudence dictates a postponement of the execution until after she gives birth or completes the nursing of her child. This delay in judgment execution underscores a commitment to safeguarding the right to life of the unborn child. Indeed, protection of human life is regarded as primary objective of Shari'ah, particularly when it concerns vulnerable persons including children. Deliberately ending a life, or a child's life for that matter,

is declared as a grave sin. In essence, no one's life is considered less valuable than another's, and the right to life under the Sharī'ah extends to the fetus (Abolaji, 2018). The fundamental question involved in this study is: what is the legal position of a human embryo in cases of marital separation? This preposition leads two points of discussion: inquiring whether or not the right to life extends to the human embryo, and what is the role of a couple regarding their embryo in the event of divorce or death.

Discussion on Ethico-Legal Position of Human Embryos

Prior to discussing the status of a human embryo, it is essential to understand when and why the cryopreservation approach is adopted. Secondly, what are the potential challenges created as a result of these techniques?

When and Why Carry Out Cryopreservation?

In Islamic jurisprudence, the cryopreservation of reproductive material is generally discouraged unless there is a compelling reason. For instance, the *fatwas* (religious rulings) on this subject, prohibit the banking of sperm and oocytes due to concerns about the indefinite storage of these reproductive materials and the possibility of mixing *nasab* (Fadel, 2002). Nevertheless, permissible scenarios include scientific research, medical studies, and conditions affecting the reproductive system. For instance, freezing sperm or eggs is deemed essential for individuals undergoing treatments like radiation or chemotherapy, as these can harm reproductive cells. Additionally, cryopreservation is allowed in cases of obstructions preventing natural conception and long-term separations, such as due to emigration or imprisonment (Al-Baz, 2014).

Challenges of Cryopreservation of Human Embryos

The cryopreservation of human embryos raises ethical and legal concerns. Firstly, determining when this practice is permissible and when it is forbidden is paramount. Secondly, there is uncertainty about how long embryos can be stored, requiring clear timeframes for preservation. Moreover, the utilization, disposition, ownership, and possession of frozen embryos give rise to disputes, sparking new debates in medico-legal spheres. Questions arise about the donation or adoption of frozen embryos—whether it is equal to legal adoption or surrogacy. Additionally, addressing cases involving shipping, abandonment, misplacement, loss, or orphan embryos requires an in-depth discussion and examination of the legal ramifications and ethical considerations associated with each scenario. Consequently, the legal debate concerning the status of the human embryo has centred on custody issues. For instance, couples may fight each other for custody, or they may jointly fight against a third party, such as an IVF clinic. Moreover, this issue can arise in cases where one or both parties are deceased. However, this study is limited to the issue of using human embryos in the context of divorce and the death of the parties involved.

Civil Law Perspectives on the Status of Human Embryos

Scientific studies state that embryos hold genetic information as human beings but do not answer the primary question of whether or not they have life (Koboska, 2019). In religious literature, Judaism and Islam opine that an embryo is not human until the the process of ensoulment, which is believed to occur at forty days in utero. On the other hand, the Catholic viewpoint differs in that an embryo holds no human status until it begins to evolve (Maienschein, 2003). In legal and philosophical discussions, the ethical-legal status of human embryos has been debated among scholars.

The debate on the status of embryos revolves around the crucial question of when human life begins. The advancement of ART, cryopreservation, and abortion has intensified the significance of this question. The first theory suggests that life begins at conception, contending that the embryo possesses inherent human rights from fertilization due to its biological attributes and continuity of development. According to this theory, an embryo consists of living cells, which are recognized as fundamental units of life. For instance, it has all the genetic components necessary for full human development, displays a continuous progression towards human life, and can metabolize, respond to changes in the environment, and respire. Support for acknowledging the life of an embryo is based on several factors. Firstly, the embryo is distinct from any cell originating from the mother or father due to its possession of unique human traits. Second, the embryo is considered human because it carries genetic traits specific to humans. Additionally, the embryo is recognized as a complete, mature, and fully developed organism, underscoring its individuality (Robert,

2011). Furthermore, a cryopreserved embryo is also deemed an unborn child within this definition, as it results from conception and is in a developmental stage preceding live birth (BS, 2021).

However, this view has been criticized as too extreme, given that many embryos are naturally lost and common contraception methods can also prevent embryo implantation. According to Uslu (2022), such loss of embryos is not considered as murder or loss of life.

From a civil law perspective, the status and rights of an embryo vary significantly across jurisdictions. Civil law often focuses on the legal personality and rights of the individual, typically recognizing legal personhood at birth. For example, in many jurisdictions, an embryo does not have legal standing and rights until it is born alive. This legal approach is primarily based on pragmatic considerations, such as the implications for inheritance rights, wrongful death claims, and other civil matters. As a result, while an embryo may be recognized as having potential human life, it is not afforded the same legal protections and rights as a born person. This discrepancy in civil law highlights the ongoing legal and ethical challenges in defining the status of embryos within the broader framework of human rights and medical ethics.

The second view is that the pre-implantation embryo is essentially a cluster of six to eight cells lacking substantive human qualities. Thus, the embryo should be considered mere property and treated no differently than any other human organ or tissue. This perspective could be seen in abortion cases, as most states categorize abortion as a lesser offense than homicide, which implies that the embryo is not regarded as fully human. Otherwise, there would have been no reluctance to charge a woman with murder for having an abortion. Nevertheless, while it may be grounded in scientific facts, it overlooks the significant value that society places on life, particularly on embryos, which are often seen as symbols of life (Belova, 2019).

From a civil law perspective, the classification of embryos as property rather than as entities with personhood has significant implications. Civil law often treats property and personal rights distinctly, leading to various interpretations and applications in legal disputes. For instance, if embryos are regarded as property, disputes over their use or disposition may be resolved through property law principles. This means that embryos could be considered joint property in cases involving reproductive disputes, subject to division or control based on property rights and agreements made between parties.

The third opinion does not grant full personhood status to the embryo but also refrains from categorizing it as mere property. This perspective acknowledges the embryo's significant symbolic value due to its potential to develop into a person. It recognizes that the embryo cannot be equated to typical human tissue or organs because of its unique potential. Nevertheless, the third theory has also faced criticism. Some critics argue that categorizing the embryo as a human life with limited value is a "*conceptual mystification*", asserting that the embryo should either have rights or not, with no middle ground (Artemenko, 2010).

In civil law, this intermediate position can be particularly complex. For example, the right to procreate and the right not to procreate come into question when one party wishes to use a frozen embryo for reproduction but the other disagrees. If the embryo is considered a child, the court applies family law to settle the case, ensuring a balanced approach to the parents' interests (Forman, 2011). However, if the court treats the embryo as an asset or property, property law principles guide the distribution, considering it joint property. Moreover, some argue that contract law should be applied, enforcing consent forms signed at the ART clinic (Vukadinovich, 2000). In the absence of specific legislation, the law of abortion can be invoked to protect the status of the human embryo, as both issues involve embryonic rights (Dolgin, 2006).

In conclusion, whether the human embryo is preserved or fresh, its legal status lacks a defined position within the legal community, giving rise to varied opinions on this subject. The ongoing debate highlights the need for clearer legislation and guidelines to address the complex intersection of biological, ethical, and legal considerations surrounding embryos.

Sharī ah Perspectives on Human Embryos

Classical jurisprudential literature may not explicitly address the status of the human embryo, but contemporary Muslim jurists talk about different stages of life before and after ensoulment. Although there are differences of opinion on when ensoulment occurs, everyone agrees that human life starts after it. They call the period after ensoulment, "*human life*" and the time before it, "*biological life*" which includes movements, breathing, and development. This earlier stage encompasses movements, breathing, development, and evolution from one phase to another. Furthermore, in the process of human reproduction, various steps occur, including a time when no specific name is assigned, but the Quran indicates the existence of something during this period (Al-Baz, 2014). Within this context, it is to be noted that Muslim jurists recognize the existence of life in the human embryo. However, they make a distinction between this embryonic life and human life.

Accordingly, classical scholars, including Ibn Qudama (1968), Ibn Hazm (1900), and Al-Shaukani (2004), argue that before ensoulment, the embryo is considered lifeless matter or blood. According to this perspective, terminating such an entity does not equate to taking human life, and performing funeral prayers for the aborted fetus is not required (Humaysh, 2007). This viewpoint aligns with the majority stance of the Hanabilah, Hanafiyyah, and Shafi'iyah schools, in contrast to the position held by the Malikiyyah and certain prominent jurists from the other three schools, such as al-Ghazali, Ibn Qayyim, and Ibn Abidin (Idris, 1993). Ibn Qayyim asserted that an embryo possesses a form of life similar to growth and nourishment observed in plants before the soul enters its body. Subsequently, it attains the faculties of perception and volition, which are the foundations of human life (Ibn Al-Qayim, 1982). Imam al-Ghazali, adopting a more pro-life stance, maintained that the gravity of culpability in terminating a fetus increases as it grows, emphasizing this moral aspect from conception to birth (Al-Ghazali, 1956).

To summarise, the debate on human embryos could be understood under the abortion discussion in Islamic jurisprudential work. The debate regarding the protection of human embryos can be categorised into several juristic views. The first opinion is that the human embryo is sacred and deserves protection since conception, so any violence against it at any stage is considered a crime (Zoahraa, 2006). The other view believes that the human embryo deserves protection, but after days of conception and before this time, it can be aborted or otherwise. This view is supported by the Shafi school of thought (Atighetchi, 2007). The third opinion is that a human embryo deserves protection after 120 days of pregnancy (Zoahraa, 2006), after entering ensoulment, but not before (Lutfi, 2006; Shawqi, 2001).

Consequently, no direct debate on the right to life of a human embryo can be found, but Sharī ah scholars address the question of whether a human embryo, particularly a frozen one, can be intentionally destroyed or left to perish. In responding to this inquiry, some suggest letting them perish naturally without any human intervention because embryos are potential human life and deserve respect. On the other hand, some argue that because embryos do not possess human status, perishing them can be done in any way (Al Kareem, 2019). Some scholars emphasize that perishing left-over embryo is a necessity and freezing may lead to mixing of progeny (Islamic Fiqh Academy Jaddah, 1989). Despite this difference in opinion, all groups acknowledge the dignity of the embryo, emphasizing that it differs from other parts of the body.

With regard to the protection of embryonic life, Imam Abū Ḥanīfah stated that in the case of a miscarriage, the person must be held accountable, as a clot of blood or a lump of flesh has the potential to grow into embryonic form. Imam Shafiī also shared this opinion where payment of the *ghurrah* (Oudah, 1999) is considered as the prescribed punishment for the offender. However, the most the strictest view on this subject is held by Mālikī jurists. According to them, once the sperm is settled in the womb, it should not be disturbed, even if it was less than forty days old (Hussain, 2003).

The cryopreservation of sperm, oocytes, and embryos is permissible as long as the married couple remains together and the transfer of embryos adheres to a valid marital contract. The utilization of embryos for research purposes is subject to the condition that the embryo is less than 120 days old, as it is believed that no "*soul*" enters before this gestational period (Serour, 2008). However, its utilization for reproduction warrants the fulfilment of several fundamental conditions. Initially, there must be a legitimate reason for cryopreservation, and no alternative solution should be available for infertility treatment. Moreover, the use of preserved reproductive material should be carried out with joint consent,

not a unilateral decision, as the embryo represents shared interests. Furthermore, fertilization of a frozen embryo should occur between the husband and wife during a valid marital contract. In the case of divorce or the death of any or both parties, the matter requires detailed consideration.

Protection of Human Embryos in Selected Muslim Countries

Most Muslim countries, including Pakistan, have no specific legislation on ART procedures, including cryopreservation of human embryos. Malaysia has some guidelines for ART procedures but no defined provision regarding cryopreservation of embryos or its legal position in cases of divorce or death. However, there are some religious rulings that prohibit using preserved embryos in divorce or after death (Al-Bakri, 2020). In Gulf countries, such as Bahrain, UAE, Oman, and Tunisia, there exists some guidance regarding this technique, where a 5 to 10-year storage timeframe is mentioned (Shestak, 2023). Similarly, Nigeria (Ayeni, 2023) and Iraq (Fayadh, 2019) have no laws for the protection of preserved embryos. Generally, constitutional articles for the right to life of individuals provide protection for human embryos, provided that the courts apply a broad interpretation to such provisions. The penal laws on abortion practices can also be extended to govern this subject matter, as well as health and care policies in connection with the care and protection of human embryos. Turkey is the first Muslim country to enact legislation on ART treatments, but there is no specific provision on this matter, particularly in divorce or death scenarios. Shia-practising countries like Iran hold some lenient views on the use of preserved embryos and their donation to others.

Cryopreserved Embryos in Event of Divorce and Death

The use of frozen human embryos between couples which have valid marital bonds does not presents much complexity. In the case of divorce, the majority of Muslim scholars do not allow using frozen embryo (Alaro, 2012) but some argue that this is allowed until the completion of the waiting period (*al-'iddah*). In other words, this permissibility depends on the existence of a marital relationship. Similarly, in the case of death, the scholars have different views. For instance, some say a marriage is terminated upon the death of a spouse (Ibn Al-Hammam, 2003). Consequently, they do not consider it permissible for the husband to have any interaction with his deceased wife, including the use of a cryopreserved embryo. In contrast, other jurists hold the view that marriage ends with the completion of the waiting period, not with the death of a spouse (Ibn Rushd, 1988). According to this interpretation, the husband's rights and responsibilities towards his wife continue during the waiting period. Accordingly, the permissibility of using a cryopreserved embryo after death depends on whether the termination of the matrimonial relationship is attributed to death or the completion of the waiting period.

The Hanafi scholars assert that marriage during the waiting period is invalid (Al-Kāsānī, 2017), citing a Quranic verse that discourages proposals until the waiting period ends (Surah Al-Baqarah 2:235). Cotemporary scholars extend this to deem the act of marrying during the waiting period as impermissible (Saedi, 2009). Moreover, Ibn Qudāmah says that all types of waiting periods have the same ruling (Ibn Qudāmah, 1968). Additionally, Ibn Nujaym notes that a woman in *al-'iddah* retains a marital link with her ex-husband (Ibn Nujaym, 2013). If these views are adopted, a preserved embryo can be used until the completion of the waiting period, irrespective of it being pursuant to divorce or death. Notably, the death of the wife ends the marriage immediately, while the death of the husband does not end the marriage immediately, but the marriage remains as long as the wife is in *al-'iddah* (Shami, 2010).

Another issue arises: marriage has two basic objectives: sexual satisfaction and procreation. The term *nikah* (marriage) holds two meanings: contract and sexual intercourse (Al-Zabīdī, 1990), however, using a cryopreserved embryo means that sexual intercourse does not take place. The concern is whether using cryopreserved embryos, which excludes the physical aspect, is ethically permissible under normal circumstances. Further, if a couple separates after creating an embryo without physical intimacy, the question is whether the principle on *al-'iddah* applies. This in reference to a Qur'anic verse, which states that there is no waiting period if the divorce happens before the conjugal act in the marriage takes place (Al-Ahzab, 33:49).

Couple's Authority in Preserved Embryos

The dearth of direct jurisprudential discourse on this subject makes the question of the authority of the couple over their preserved embryo in the case of a divorce to be debateable. However, apparently jurists have imposed the condition to get consent of both parties to use frozen embryo show the status of joint asset of the parties (Alaro, 2012). Thus, no unilateral priority authority exists with the husband or wife in case of a divorce. In the case of death, the issue is whether or not the living party has authority to decide the fate of the frozen embryo. Generally, it can be donated for research purposes but the problem arises when it is use for reproduction. For instance, the husband desires to use it with another wife or the wife desires to use it within the waiting period. Moreover, the heirs may wish to use the preserved embryo after the death of one or both parties, believing it to be the inherited asset of the deceased. To resolve these problems, it is suggested that several of following approaches may be employed:

Firstly, a contractual approach can be applicable to the embryo dispute unless the signed contract violates any Shari'ah injunction. This is based on the Shari'ah principle that is enunciated in the Quranic verse on the fulfilment of promises:

Translation: O you who believe! Fulfil your agreements.

(Surah Al-Ma'idah, 5:1)

Moreover, the Prophet (PBUH) stated:

Translation: Muslims must abide by their conditions (which they have made), except for a condition that makes unlawful something that is lawful or lawful something that is unlawful.

(At-Tirmidhi, 1352, 2007)

A second method is the adjudication approach, where the interpretation should be aligned with the parties' intentions and balance the interests of both parties. For instance, if a woman desires to use a frozen embryo, she can be allowed to do so as a priority because her husband has already fulfilled his role of giving his sperm, and therefore, she may impregnate and nurture the embryo, leading to a live birth. Further, the retrieval of the ovum is more difficult than sperm retrieval, meaning the wife has made a significant contribution to the creation of the embryo. Since the potential loss of the embryo affects her more deeply, it is in the best interest of all parties to prioritize the wife's claim. Thus, the court can adjudicate case-by-case, giving priority to the wife when appropriate.

A third solution is the donation of frozen embryos. Usually, donations for or by third parties are not permitted, but some jurists allow it for a second wife, considering it akin to a suckling mother relationship. However, important issues need to be further examined (Zubair, 2023). It is to be noted that human embryos possess genetic transformations, and therefore in the case of blood nurturing, would this also result in any form of genetic transformation? In such a case, who will be the real mother or donor, who has priority rights, and from whom inheritance will be restricted?

From a legal perspective, the concerns related to use of the embryo after divorce or death or doubtful scenarios, could be analyzed under the rulings of (*waṭ' al-shubha*). In such controversial cases, jurists have acknowledged the legal repercussions such as establishing legitimacy and parentage. According to Hanafi jurists, the child should be attached to the husband, but others say that a physiognomist (*qā'if*) should be consulted, and the case should be settled based on his expert opinion (Ibn Qudāmah, 2017).

Consequently, the majority of Muslim scholars are against the use of frozen embryos after the death of the husband. This perspective is supported by scholars such as Sheikh Jad Al-Haq Ali Jad Al-Haq, Sheikh Atiya Saqr, Sheikh Mustafa Al-Zarqa, Dr. Bakr Abdullah Abu Zaid, and the Islamic Fiqh Academy in Makkah and the Islamic Organization for Medical Sciences (Al-Baz, 2014). According to the juristic views, the ejaculation and insertion of reproductive material should be respected, which means that it should not be discharged in a forbidden manner, and this should be during the life of the husband (Al-Bajarami, 1995). Some scholars allow post-death usage under specific conditions, such as within the waiting period, and provided no mixing occurs, but this is not advisable. In spite of some jurists considering pregnancy in the absence of the husband as a sign of adultery, in the context of using frozen

embryos after the husband's death, adultery rulings may not apply, establishing the legitimacy of the resulting child (Al-Khayyat, 1981).

Conclusion

This paper highlights that the right to life is listed as a top priority in Sharī'ah literature, akin to civil law. To enhance this objective, the treatment of infertility is encouraged, and the cryopreservation of human embryos is allowed. The research reveals diverse perspectives among Muslim jurists concerning the ethico-legal standing of the human embryo, particularly in relation to the extension of the right to life. Accordingly, they acknowledge the existence of life within the human embryo but assert that human status occurs after ensoulment. Regarding its biological status, they emphasize giving that such preserved embryos be accorded sanctity and protection. Further, contemporary jurists perceive the preserved human embryo as the joint asset of couples, permitting its use while the marital relationship subsists. Nevertheless, some of them allow its usage until the waiting period elapses. Where the use of frozen embryos by a widowed wife is carried out beyond the waiting period, scholars acknowledge that this may lead to legal repercussions on legitimacy and parentage. The next outcome of this study is that contractual, adjudication, balancing the best interests of parties, and donation-adoption principles can be employed to sort out the issue of authority or custody of couples over preserved embryos in cases of divorce or death.

In the light of the aforementioned results, it is acknowledged that the rapid advancement of biotechnology presents Sharī'ah jurists with ethico-legal challenges and prompts juridico-medical debates, especially regarding the legal status of human embryos. This is particularly pertinent in situations such as divorce or death. Consequently, contemporary scholars are compelled to formulate life-protecting rules to address the complexities of emerging biomedical technologies. The definition of life and its beginning after ensoulment pose ethical questions about embryonic sanctity. Nevertheless, human life deserves respect both at the foundational and physical levels, as the Qur'an categorically reveals the embryonic development of humans. Classical jurisprudential articulation may not comprehensively cover modern biomedical propositions and therefore, there is a pressing need for fresh understanding of medical situations from both the scientific and Sharī'ah perspectives.

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