



REPRODUCTIVE RIGHTS AND RELIGIOUS ETHICS: THE LEGAL STATUS OF ARTIFICIAL INSEMINATION UNDER THE NIGERIAN CONSTITUTION AND ISLAMIC LAW

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Abstract

Islamic law allows assisted reproduction through certain conditions, based on independent juristic reasoning, if the process does not conflict with the core values of Islamic law. Artificial insemination exists as a controversial practice in Nigeria because it meets resistance from conflicting laws and moral codes of Islamic teachings. Nigerian Muslim couples dealing with infertility face a dilemma when medical technology provides artificial insemination because religious and legal guidelines remain unclear. Does artificial insemination pass Islamic Law standards? What is the legal status of a child resulting from artificial insemination procedures? This paper demystifies the legal position of artificial insemination practice within Nigerian law and Islamic jurisprudence. Islamic scholars who grant permission for married couples to use their biological material for reproduction at the same time condemn outside sperm and egg donations because they fear these practices will distort genetic lines. Nigerian law lacks clarity regarding the new technologies used by Assisted Reproductive Technology in defining who qualifies as a parent. Section 25(1)(b)2 of the Nigerian constitution recognizes heterosexual relationships as conventional parenthood. Nonetheless, that is a precarious assumption as it implies that there are no legal stances for children conceived through non-natural methods. The paper uses doctrinal research methodology to investigate assisted reproduction issues by studying both Nigerian regulatory frameworks together with Islamic Jurisprudential views. The results show that the lack of definite laws leads to unclear situations which demand quick legal adjustments to resolve the conflict. The paper calls for new laws to support Nigerian and religious perspectives.

Keywords: Reproductive rights, Religious ethics, Artificial Insemination, Islamic Law and Nigerian Law

1.0 INTRODUCTION



Barrenness is a widespread health issue affecting millions across the globe. According to a 2023 report by the World Health Organization, one in six people worldwide experiences barrenness.¹ In the Nigerian context, a study conducted by Adetoro and Ebomoyia (1991) using systematic random sampling revealed an infertility prevalence rate of 30.3% among the population.² In response to the growing burden of barrenness, Assisted Reproductive Technology (ART) was developed. ART encompasses a range of medical procedures designed to assist individuals in achieving pregnancy. These include In-Vitro Fertilization (IVF), Intracytoplasmic Sperm Injection (ICSI), cryopreservation of gametes and embryos, fertility medications, and artificial insemination. While ART exists in various forms, the focus of this paper is specifically on artificial insemination. Human nature includes a core desire to have children, which makes infertility a complex issue: a combination of medical and emotional as well as social challenges for most affected couples.³ The Nigerian culture emphasises lineage and individual identity, which makes childlessness result in social prejudice alongside emotional damage which often results in family breakdown.⁴ Artificial Insemination (AI) has stood as a great advancement in reproductive science, as it enables an effective remedy that allows medical conception. However, Artificial insemination lacks a definite legal framework in Nigeria. This has generated numerous unanswered legal questions, particularly in a country like Nigeria, where secular laws coexist with Islamic law. Does the law recognise artificial insemination procedures? Under what legal standing does a child become after it is produced with AI techniques? What is the Islamic legal ruling on this process? Under the Islamic law perspective, infertility is recognised as a legitimate concern. Thus, according to the majority of jurists, seeking medical treatment is encouraged. This is evidenced in some Qur'anic verses which contain instances of prophets praying for offspring, showing the significance of procreation.⁵ Thus, considering the nature of AI, it is subject to strict scrutiny. Islamic law makes a distinction between homologous insemination (AIH) and heterologous insemination (AID). In the former process, the husband's sperm is used, while the latter involves third-party donors. AIH is generally accepted by the majority of scholars, as long as it preserves and takes place within a lawful marriage.⁶ On the other hand, AID is majorly condemned, as it introduces genetic material from outside the marriage bond, on the basis that it raises serious

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¹ Purity, N. *et al.* 'Financial Costs of Assisted Reproductive Technology for Patients in Low- and Middle-Income Countries: A Systematic Review' (2023) 2023(2) *Human Reproduction Open* hoad007 <https://doi.org/10.1093/hropen/hoad007> accessed on 17 March 2025.

² Adetoro, O. O, Ebomoyi, E. W. The prevalence of infertility in a rural Nigerian community. *Afr J Med Med Sci.* 1991 Mar;20(1):23-7. PMID: 1905466.

³ Uthman, I. O., Abdulsalam, M. K. & Adebawale, Z. M. (2025). The Transformative Influence of Muslim Women Entrepreneurs in Ibadan North Local Government of Oyo State, Nigeria. *UMA Journal of Religious Studies, Vol. 2, No. 1.* 27-40.

⁴ Oladosu-Uthman, H. & Abdulsalam, Mikail Kolawole (2020). Street begging among Muslims in Ibadan – On Islam and social manners. *African Journal of Sustainable Development, Volume 10, No 2.* 53-74.

⁵ See Qur'an 3:38; 19:5-6; 21:89-90.

⁶ Nasirudeen Mohammed, 'A Critical Analysis of Artificial Human Reproduction: An Islamic Law Perspective' (LLM Dissertation, Ahmadu Bello University, 2016) 112.



questions ranging from the question of parental legitimacy, to the right of inheritance of the child produced by AID, and to the moral integrity of the process.⁷ Some Islamic jurists term the use of a donor's sperm as Zina (adultery), positing that it disrupts established lineage (*al-Nasab*); and one of the germane aims of *Shari'ah* is the protection of lineage.⁸

From a Nigerian legal framework, the Constitution of the Federal Republic of Nigeria (1999) as amended provides for the right to privacy and family life; however, no specific framework provides for or regulates AI, leaving a deep legal vacuum.⁹ Though statutes like the National Health Act 2014 set medical standards, they fail to address parental rights, inheritance issues, or the legal status of children born through ART.¹⁰ This ambiguity is problematic, particularly in Sharia-implementing states, where the *Shari'ah* Court handles family matters.¹¹ How does the law define parenthood in cases of artificial conception? Under current laws, how can a child born through artificial insemination obtain complete inheritance entitlement from both state and Islamic inheritance systems? The unclear legal matters about AI create more debate regarding AI in Nigeria.

Furthermore, the concept of AI has raised different theoretical views in the country. Social views about artificial insemination emanate from religious standards and communal environments where people reside. A study in southwest Nigeria's reproductive technology sector revealed that the Muslim population alongside other Nigerians maintain different opinions about artificial insemination; although some Muslims embrace AI as medical progress, others think it violates divine natural laws.¹² Some scholars maintain that AI should be adopted with care as it needs to comply with medical values together with religious principles. Some people voice serious worries regarding protective risks for vulnerable couples and fears of human reproduction becoming commercialized.¹³

This paper is an in-depth juristic scrutiny of the legal status of artificial insemination in Nigerian law and Islamic jurisprudence, where ethical dilemmas, cultural perspectives and judicial pronouncements are viewed. Applying a doctrinal research approach, it examines constitutional provisions, statutory legislation, case law, and Islamic legal opinions and provides an in-depth insight into where AI belongs in Nigeria's socio-legal fabric. The paper highlights that there is an

⁷ Adam Ibrahim Ishaq and others, 'Juxtaposing the Position of Artificial Insemination in Sharia' (2017) Nasarawa State University, Keffi, 110.

⁸ Yusuf Abdulrasheed Musa and Yunus Opoola Murtala, 'Artificial Insemination: A Review on the Contemporary Islamic Perspectives' (2020) 17(2) African Journal of Politics and Administrative Studies 85.

⁹ Constitution of the Federal Republic of Nigeria 1999 (as amended), s 37.

¹⁰ National Health Act 2014, s 48.

¹¹ Jafar Abdullahi, 'Islamic Law and Reproductive Technologies: A Comparative Study of Sharia Courts in Nigeria' (2021) 14(3) Journal of Islamic Law and Ethics 134.; Odeniyi, I. K & Abdulsalam, M. K. (2025). Imamship in Nigeria Police Formation's Mosque: History, Appointment and Functions. *Al-hikmah International Journal for Islamic Studies & Human Sciences* Vol. 8, No. 2. 346-361 e-ISSN: 2637-0581.

¹² Chisaa Onyekachi Igbolkwu and others, 'Religious and Cultural Interpretations of Artificial Insemination in South-West Nigeria' (2023) 3(100113) AJOG Global Reports 7.

¹³ Ijtihad on Artificial Insemination – Islamic Law Blog (2020) <https://islamiclaw.blog/2020/07/21/ijtihad-on-artificial-insemination/> accessed 14 March 2025.;

Odeniyi, I. K. & Abdulsalam, M. K. Periscoping Mosque Management in Police Formations, Southwestern Nigeria, In the Lens of Henry Fayol Management Principles. ANP Journal of Social Sciences and Humanities Vol. 6 no. 2 (2025) 26–34. DOI: <https://doi.org/10.53797/anp.jssh.v6i2.4.2025>.



urgent need for legislative action, which finds a balance between the right to a safe abortion, ethical aspects of religion, and general social values. Without proper regulatory structures, couples using AI remain at risk of legal doubts, putting at risk the legal rights of children conceived through these means. This paper speaks for a harmonized measure where scientific progress, religious teachings, and human rights are brought into one fold, making AI ethically, legally, and socially appropriate in Nigeria.

2.0 Conceptual Clarifications

To Erdman and Cook (2008), the term 'reproductive rights' refers to 'the freedom of individuals to control decisions regarding contraception, abortion, sterilization, and childbirth'.¹⁴ Thus, rights to sexual and reproductive health imply that an individual enjoys total physical, mental, and social well-being in every sphere of his reproductive system and its functions. This includes the right to engage in fulfilling and secure sexual experiences, enjoy healthy pregnancies and deliveries, and choose if, when, and how frequently to have children. Thus, this is the ground upon which artificial insemination has also been considered a form of reproductive rights.¹⁵

Artificial insemination to Black's Law Dictionary, is "a method by which a female is impregnated through the injection of sperm from a donor other than her husband and other than through sexual intercourse." According to Wellens (1968),¹⁶ Artificial insemination has been described as "the deposition of male semen into the female's vagina, cervical canal, or uterus by following a systematic process other than sexual intercourse". The first recorded case of artificial insemination was John Hunter in 1790, who helped impregnate a linen draper's wife. The first reported case of artificial insemination by a donor occurred in 1884: William H. Pancoast, a professor in Philadelphia, took sperm from his "best-looking" student to inseminate an anaesthetized woman without her knowledge. The case was reported 25 years later in a medical journal. The sperm bank was developed in Iowa starting in the 1950s in a research conducted by University of Iowa medical school researchers - Jerome K. Sherman and Raymond Bunge. Thus, this has been seen to lead to a typical offspring. During this procedure, the semen is inserted into the female by introducing a portion of it, either in its collected or diluted state, into the cervix or uterus through mechanical techniques at the appropriate time and under the best hygiene standards.¹⁷

The common form of artificial insemination is intrauterine insemination (IUI). This process involves the male partner's sperm being deposited into the female's uterus using a long thin tube called a catheter;¹⁸ nevertheless, there are various additional forms of artificial insemination too. Here are a few of them:

¹⁴ J.N. Erdman and R.J. Cook, 'Reproductive Rights' in *International Encyclopedia of Public Health* (2008)

<https://www.sciencedirect.com/topics/social-sciences/reproductive-rights#:~:text=The%20term%20'reproductive%20rights'%20refers,abortion%2C%20sterilization%2C%20and%20childbirth> accessed 17 March 2025.

¹⁵ Yinka Olomojo, *Medical & Health Law: The Right to Health* (Princeton & Associates Publishing Co. Ltd, 2019) 4-9.

¹⁶ Wellens, D. R. 1968. Human Artificial Insemination: An Analysis and Proposal for Florida. *University of Miami Law Review*, Vol. 5, No 1. 952-972.

¹⁷ Artificial Insemination Division, *Artificial Insemination* (AIDLS, 17 March 2025) <www.aidls.gov.bd> accessed 17 March 2025.

¹⁸ Mike Paddock, 'What is Artificial Insemination? Why is Artificial Insemination used' (2011)



- (i) Intra-cervical Insemination: this is used where the sperm of a male partner is placed in the woman's cervix, from there the sperm travels into the uterus and fallopian tubes on its own;¹⁹ and
- (ii) Intra-tubal Insemination: - in this, the sperms are placed directly into the fallopian tubes. The sperm swims through the cervix or uterus. They are placed exactly where they need to reach and fertilize the eggs.

Furthermore, there are two types of Intrauterine Insemination based on the source of the semen sample utilized; if it is collected from the husband, it is called artificial insemination by the husband (AIH), while if the sperm is from a donor, it is termed artificial insemination by donor (AID).

- (a) Artificial Insemination by Husband—AIH or partner insemination is recommended for heterosexual couples diagnosed with unexplained infertility or minor fertility issues, including mild to moderate endometriosis; this method is also referred to as homologous artificial insemination.²⁰
- (b) Donor Artificial Insemination: AID or donor insemination (DI) is recommended for women with no partner or lesbian couples desiring to have a child. It is also common among heterosexual couples where the man's sperm is unusable due to genetic defects.²¹

3.0 Position of Nigerian Laws on Artificial Insemination

A scholarly review of legal frameworks in Nigeria on reproductive health and rights reveals that while there is no specific legislation directly regulating Assisted Reproductive Technology (ART) including artificial insemination, the right to reproductive health is generally recognized, and artificial insemination, especially with the husband's sperm, is not legally prohibited.²² For instance, the Constitution of the Federal Republic of Nigeria (1999, as amended), while not explicitly stating reproductive rights, Section 17, under the social objectives of the Nigerian state, is relevant to reproductive health and rights. Also, The National Reproductive Health Policy received approval in 2010 by the Nigerian Federal Government, aiming to guarantee accessibility and availability of comprehensive sexual and reproductive health information and high-quality services.²³

Since there is no single or dedicated legal framework in Nigeria for Assisted Reproductive Technology, particularly, artificial insemination, it has generated a series of legal and ethical

<https://www.webmd.com/infertility-and-reproduction/guide/artificial-insemination>. Accessed on the 17th March, 2025

¹⁹ Ibid

²⁰ A K Omland and others, 'Artificial insemination by husband in unexplained infertility compared with infertility associated with peritoneal endometriosis' (1998) 13(9) *Human Reproduction* 2602.

²¹ Op Cit (n 16)

²² Oluwakemi Amudat Ayanleye, 'Women and Reproductive Health Rights in Nigeria' (2013) 6(5) OIDA International Journal of Sustainable Development 127

<https://staff.ouagoiwoye.edu.ng/uploads/359_COURSES_Women_and_Reproductive_Health_Rights_in_Nigeria_11444.pdf> accessed 18 March 2025.

²³ Federal Ministry of Health, *National Reproductive Health Policy* (2010)

<<https://search.issueab.org/resource/national-reproductive-health-policy.html>> accessed 18 March 2025.



questions which include: the right of the donor, inheritance and succession disputes, the legal, medical malpractice, and liability and status of the child generated from artificial insemination.²⁴ Starting with the question of the legal status of the child generated from artificial insemination. The first thing to know here is that there are many key factors attached to the legal status of the child. These include: the child's legitimacy which depends on whether they were born within a valid marriage under the applicable system of law; paternity, which determines a child's rights to inheritance and identity; and lastly, rights and legal protection of the child. Section 25(1)(b) of the Nigerian constitution only recognises heterosexual relationships as traditional parenthood. Thus, here, where a child is produced through artificial insemination by the Husband (AIH), the husband can claim the paternity of the child and such child possesses his full legal rights of being a child. However, the risky assumption here is that it would mean that there is no provision for the legal status of the child generated through a donor artificial insemination (AID).

3.1 Legal Theories on the Status of a Child Conceived through Artificial Insemination Donor (AID)

A child is considered legitimate if they are born in a legal marriage. Artificial Insemination Donor (AID) involves the inclusion of a third party whose sperm is used to fertilize the wife's egg. This poses a question on the status of a child born via AID; is it considered to be contrary to the widely accepted definition of legality? As a result, these scholarly opinions on parenthood can be grouped into three distinct approaches:

The first approach is Genetic or Biological Parenthood. Here, parenthood is determined only through biological processes because those who donate sperm or eggs earn parent status by nature. The development of assisted reproductive technologies (ART) as a medical advancement has created new family relationships by adding sperm into reproductive practices. According to Hall (1999),²⁵ genetic parents possess an inherent right to their offspring. Also, according to Simisola and Egbokhare (2018),²⁶ the definition of a "child" in the Nigerian constitution includes "a step-child, a lawfully adopted child, a child born out of wedlock and any child to whom an individual stands in the place of a parent."²⁷ Therefore, it is feasible that the Nigerian constitution does not restrict parenthood solely to biology or genetics, but acknowledges the existence of social parents. This means that where a child is produced through donor artificial insemination (AID), the donor of sperm can still be recognised as a parent even where he is commissioned to donate. This approach position is further strengthened by the provision section 63(1) of the Child Rights Act, 2003 that provides thus;

"In any civil proceedings in which the paternity or maternity of a person falls to be determined by the Court hearing the proceedings, the Court may, on an application by a party to the proceedings, give a direction for—(a) the use of scientific tests,

²⁴ Adewumi A. The need for assisted reproductive technology law. *University of Ibadan Law Journal*. 2012;2(1):19-41.

²⁵ Barbara Hall and others, "The Origin of Parental Rights." *Public Affairs Quarterly* 13, no. 1 (1999): 73-82. <https://www.jstor.org/stable/40441215> Accessed 18 March 2025.

²⁶ Simisola O Akintola and Olohikhuae O Egbokhare, 'Parenthood: Is the law in Nigeria fit for assisted reproductive technology?' (2018) *Indian Journal of Medical Ethics* <https://doi.org/10.20529/IJME.2018.012> accessed 18 March 2025.

²⁷ 11: Fifth Schedule, S.19 of Constitution of Federal Republic of Nigeria 1999 (as amended).



including blood tests and DNA tests, to ascertain whether the tests show that a party to the proceedings is or is not the father or mother of that person.”

Thus, since the scientific tests will reveal the donor of sperm as the father, he will assume the position of a parent under this provision. However, critics object to this viewpoint because it emphasizes genetic connection more than it represents a positive biological connection between parents and children.

The second approach is The Intention Approach. This theory states that parenthood stems from the desire to form and nurture a child rather than from biology. It advocates for ART in recognizing people who intentionally plan for a child's conception as parents. Nigeria does not have any particular laws which explicitly attempt to adopt the Intention Approach to parenthood. Unlike some countries with ART legislation, like the UK's Human Fertilisation and Embryology Act 2008, no legislation in Nigeria acknowledges parental intentions independent of biological facts. Even with the lack of explicitly intentional AID laws, Section 165 of the Evidence Act of 2011 makes a presumption that the child of a married woman is legitimate and that the man is the father of the child, even in the absence of a DNA relationship, which is not unusual. This is similar to the presumption contained in the Human Fertilisation and Embryology Act of 2008 in the United Kingdom. A major critique is that it could relieve some biological parents of the consequences of responsibility, which is their act of begetting the child.

The last approach, the Best Interest Approach, uses child welfare as its main criterion for deciding matters related to parenthood. Nigeria's Child's Rights Act 2003 under Section 1 determines that all child-related decisions should prioritize their best interests. Traditionally experts have assumed that biological parents offer the best option for children yet analysts question this belief since no concrete evidence demonstrates its truth. The process of adoption demonstrates that parents who are not biologically related to a child may offer superior quality care with more stability.

The unavailability of appropriate AIDS law in Nigeria has raised issues concerning the legal status of children born through this method. The Genetic Parenthood Approach, which allocates parenthood based on blood tie, conforms to Section 63 (1) of the Child Rights Act 2003 which permits paternity confirmation through DNA tests. These pose problems when a sperm donor who did not plan on undertaking parental obligations, is allotted as a father who takes parental responsibility. The Intention Approach which focuses keenly on the voluntary intention to conceive or parent a child is, to some extent, supported by Section 165 of the Evidence Act 2011 which creates a presumption of legitimacy upon a child born to a married woman and attributes paternity to her spouse. However, there is no law in Nigeria dealing with assisted reproductive technology (ART), or dealing with deliberate parenthood. The Best Interest Approach under section 1 of the Child's Rights Act 2003 deals directly with the legal perception of parenthood concerning the child's interest. This principle does not pertain to ART disputes which is where the blend of real, volitional, and social parenthood causes conflict.

4.0 Islamic Jurisprudence on Curing Infertility through Artificial Insemination

Islamic law known as *Shari'ah* was revealed to Prophet Muhammad at the beginning of the 7th century A.D. The revelation extended over 23 years.²⁸ During this period, the prophet was able,

²⁸ Noibi, M. A. and Abdulsalam, Mikail Kolawole (2016). Abū Ibeji's salafi movement and the Muslim ummah in Ibadan. *ORITA: Ibadan Journal of Religious Studies, Volume XLVIII, No 1 and 2.* 293-310.



through divine guidance, to establish *Shari'ah* in its totality. *Shari'ah* covers every aspect of man's endeavour, as it covers provisions dealing with the Administration of the state in matters about politics, economy, war and peace, and family matters etc.²⁹ The evidence of this is Qur'an 16:89 "...And We have sent down to you the Book as clarification for all things and as guidance and mercy and good tidings for the Muslims." Also, Qur'an 6:38 stresses, "...we have not neglected in the Register a thing..." These verses highlight that the Qur'an provides guidance in all aspects of life, covering legal, socio-political matters and health issues, including curing of infertility through Artificial Insemination. Thus, Islamic law does not rule against finding a way of curing infertility. This is evidenced in some Quranic verses which contain instances of prophets praying for offspring and which show the significance of procreation.³⁰ Also, it was reported that Usamah bin Sharik said:

Some Bedouins asked: 'O Messenger of Allah shall we treat (our ill)?' He said: 'Yes, O worshipers of Allah! Use remedies. For indeed Allah did not make a disease but He made a cure for it - or - a remedy. Except for one disease.' They said: 'O Messenger of Allah ! What is it?' He said: 'Old age.'³¹

It is on this basis the issue of artificial insemination and many other contemporary subjects are progressively gaining attention in constructive legal discussions due to the *Ijtihad* (an individual's attempt to derive interpretations from Islamic law) that is exercised by modern Islamic scholars. Today, the International Islamic *Fiqh* Academy (IIFA) affiliated with the Organisation of Islamic Cooperation (OIC) is pioneering in issuing resolutions regarding contemporary bio-ethical problems. One of these is the permissibility of artificial insemination in Islamic law outlined in Resolution 16 (4-3).³² The Academy is said to have classified seven methods of artificial insemination, some of which are completely forbidden, while others are permissible under certain conditions. This classification is made based on the *Maqaasid Al-Shariyyah* which refers to the goals and objectives of Islamic Law primary *Shari'ah* objectives, these include safeguarding the family structure, lineage, and relations.³³

The five prohibited methods touch on forms of artificial reproductive techniques that blur the lines of legal parenthood, result in the loss of motherhood, and involve inter-marital genetic material exchange. As an example, one such method is IVF involving a husband's sperm and his wife's ovum but implanting the fertilized embryo in another woman's womb. Another impermissible method involves fertilizing the egg of an unmarried woman with the sperm of an unmarried man and the resultant embryo is carried by a host mother. These restrictions to some degree arise from the worry about the purity of lineage, and the disintegration of established families and social order, which in principle is an Islamic jurisprudence problem.³⁴

²⁹ Abdullahi Ahmed An-Na'im, 'Shari'a and Positive Legislation: Is an Islamic State Possible or Viable?' (1998) 5(1) Yearbook of Islamic and Middle Eastern Law Online 29 https://brill.com/abstract/journals/yimo/5/1/article-p29_1.xml Accessed 19 March 2025.

³⁰ Op Cit (n. 3)

³¹ Jami` at-Tirmidhi 2038

³² International Islamic Fiqh Academy, 'Test-Tube Babies (In Vitro Fertilization)' (Resolution No. 16 (4-3), 16 October 1986) <https://iifa-aifi.org/en/32254.html> accessed 20 March 2025.

³³ Islamic Law Blog, 'Ijtihad on Artificial Insemination' (21 July 2020) <https://islamiclaw.blog/2020/07/21/ijtihad-on-artificial-insemination/> accessed 20 March 2025.

³⁴ Op Cit (n. 30)



On the other hand, the IIFA allows two specific types of artificial insemination under very specific conditions. The first consists of the IVF of the wife's ovum with the husband's sperm which is then implanted into the wife's womb. The second method is the direct insemination of the husband's sperm into the wife's womb. However, these methods can only be practised for reasonable causes; therefore, artificial insemination should only be done when it is impossible to conceive naturally. In addition, there must be stringent procedural safeguards to prevent misuse of reproductive technology and ensure that the biological relationship is not unclear.³⁵

In short, the viewpoint of Islam on the issue of the legal permissibility of artificial insemination as provided by the IIFA, is integrated with the wider goals of *Shari'ah* Islam regarding family structure and lineage. If techniques pose a possibility of confusing genealogies and raise ethical issues, they are completely banned. However, some methods may pass under stringent guidelines. This complexity captures the essence of modern-day law *ijtihad* in Islamic law and ethics in science and insemination.

Furthermore, the *Majlis al-Majma' al-Fiqh al-Islami*³⁶ in Makkah, recognises that many married couples wishing to have children often suffer from deep interior pain due to infertility. In Islam, children are a form of blessings and not being able to conceive can be both emotionally and spiritually demanding. The council has suggested that artificial reproductive techniques might be permitted so long as they abide by Islamic teachings. Nevertheless, those techniques are also not unrestricted; they must be in line with the bounds imposed by *Shari'ah* so that the process will not be construed to be unethical or immoral.³⁷

The acceptance of Assisted Reproductive Technology (ART) has been hotly contested among Islamic scholars – Muhammad Ibn Saalih al-Uthaymeen was one of those who offered his insights.³⁸ He distinctly stated that it ought only to be considered when natural conception is impossible. For those who do, there are at least three prerequisites that must be met for ART to be allowed. First, use of any form of donor sperm is prohibited; only the husband's sperm is to be used. Second, sperm must be collected in a permissible manner, and that means being enclosed through marital relations rather than through masturbation. Third, the fertilized embryo must be placed into the body of the wife, never in another woman's body, for that would bring problems of lineage and parentage.

There also exist other matters that couples must take into account in relation to ART. The need should be authentic, as Islam promotes restraint, and hasty medical action is strongly frowned upon. According to Chamsi-Pasha and Al-Bar (2015), Islamic law frowns on any use of ART with no medical justification. Self-imposed single motherhood or fatherhood, as with lesbians or gays longing for children, is a sharp negation of Islamic law provisions.³⁹ Thus, modesty for women in

³⁵ Islamic Helper, 'Islamic Ruling on Artificial Insemination: Permitted and Forbidden Methods' <https://islamichelper.com/fatawa/islamic-ruling-on-artificial-insemination/> accessed 20 March 2025.

³⁶ Islamic Fiqh Council of the Muslim World League, 'Artificial Insemination' (Islamic Fiqh, 2021) <https://www.islamicfiqh.net/en/articles/artificial-insemination-349> Accessed 21 March 2025.

³⁷ Majlis al-Majma' al-Fiqh al-Islami, 'Resolutions and Recommendations of the International Islamic Fiqh Academy' (International Islamic Fiqh Academy, 2021) <https://iifa-aifi.org/wp-content/uploads/2021/12/Resolutions-Recommendations-of-the-IIFA-Official-Edition-Oct-2021.pdf> Accessed 21 March 2025.

³⁸ Muhammad ibn Saalih al-Uthaymeen, *Fataawa Islamiyyah* (vol 3, Darussalam Publishers 2002) 30 <https://archive.org/details/Fatawa-Islamiyah-fiqh> Accessed 21 March 2025.

³⁹ Hassan Chamsi-Pasha and Mohammed Ali Albar, 'Assisted Reproductive Technology: Islamic Sunni Perspective' (2015) 26 *Human Fertility* 50, 174 <https://www.researchgate.net/profile/Hassan-Chamsi->



treatment would mean avoiding male physicians where female doctors are present and able to do so. Furthermore, there are no sperm and egg banks because it is uncertain who would rightfully use them, which is ethically dubious. The essence is to make sure family and lineage, which Islam highly regards, is not compromised by ART.⁴⁰

Most importantly, trust is vital here. The people responsible for this work should be of good character; otherwise, any clumsy work or misconduct could lead to disaster. At the end of the day, ART in Islam is not a scientific issue, it is a question of the balance between faith, ethics, and medical development. Islam allows some surgical procedures to be done but not without consideration for the value of life, family, and morality. Following these rules enables couples to achieve their parental desires without departing from the teachings of Islam.⁴¹

5.0 Comparative Analysis of Artificial Insemination in Nigerian Law and Islamic Jurisprudence

The Constitution of the Federal Republic of Nigeria (1999, as amended) does not directly regulate AI, but guarantees the right to privacy and family life in Section 37. Ayanle (2013),⁴² argues that even though reproductive rights are granted in principle, there is no specific legislation which creates ambiguity on the legal status of children born through AI and the obligations of the relevant parties involved in the production of the AI child. In addition, the National Health Act of 2014 which regulates health care services in Nigeria does not resolve basic legal issues like defining motherhood and fatherhood in Artificial Insemination (AI) cases. Such gaps in the law create uncertainties, especially in cases relating to parentage and inheritance.

While Islamic law on the under hand, displays a more specific view on the concept legitimacy. For instance, according to Muhammad ibn Saalih al-Uthaymeen's interpretation, only children born through AIH are considered legitimate under Shariah, whilst AID is viewed as *zina* (adultery) and therefore unlawful. Also, *Majlis al-Majma' al-Fiqh al-Islami*, one of the important centres for Islamic jurisprudence, declared that a child born of AID lacks the right to inherit from the sperm donor or from the mother's husband, thus consolidating the Islamic restriction on donor-assisted conception. This position is different from the position of the law in Nigeria where a child born with the help of AI may still be regarded as having legal social parentage.

In Nigerian law, children born within wedlock are presumed to be legitimate under Section 165 of the Evidence Act 2011 which holds that a child of a married woman is presumed legitimated until proven otherwise. However, legal scholars like Simisola O. Akintola and Olohikhuae O. Egbokhare claim that the position of children born through AID is especially murky as there is no Nigerian law that states whether the sperm donor has any parental obligations or claims. In the

[Pasha/publication/272100240 Assisted Reproductive Technology Islamic Sunni Perspective/links/62e360e59d410c5ff36b9f15/Assisted-Reproductive-Technology-Islamic-Sunni-Perspective.pdf](https://pasha/publication/272100240_Assisted_Reproductive_Technology_Islamic_Sunni_Perspective/links/62e360e59d410c5ff36b9f15/Assisted-Reproductive-Technology-Islamic-Sunni-Perspective.pdf) Accessed 21 March 2025.

⁴⁰ Chokri Kooli, 'Review of Assisted Reproduction Techniques, Laws, and Regulations in Muslim Countries' (2019) 24 Middle East Fertility Society Journal 8 <https://mefj.springeropen.com/articles/10.1186/s43043-019-0011-0> Accessed 21 March 2025.

⁴¹ 'Religious Response to Assisted Reproductive Technology' (Wikipedia, 2025) https://en.wikipedia.org/wiki/Religious_response_to_assisted_reproductive_technology Accessed 21 March 2025.

⁴² Ayanleye, O. A. 'Women and Reproductive Health Rights in Nigeria' (2013) 6(5) OIDA International Journal of Sustainable Development 127.



absence of specific legal provisions, children conceived through AI may have problems legislatively when it comes to claiming inheritance and establishing parentage.⁴³

Islamic law takes a more rigid approach to the question of legitimacy. In the opinion of Muhammad ibn Saalih al-Uthaymeen, Shari'ah accepts children born through Artificial AIH as legitimate, while children conceived through AID are regarded as illegitimate and its practice is deemed unlawful.⁴⁴ One of the chief authorities in Islamic law, the *Majlis al-Majma' al-Fiqh al-Islami*, deemed as unlawful AID in Islam has stated that a child produced through an artificial insemination done by a donor is not permitted. This differs from the law in Nigeria which may accept the existence of a child's social parentage for purposes of law even if the child was conceived by means of artificial insemination.

The question of inheritance remains one of the most contentious issues within Nigerian law and Islamic jurisprudence. Inheritances in Nigeria are conducted in accordance with the provisions of the Wills Act, customary law, and other statutory regulations. Observers like Adewumi A. suggest that the gaps in legislation regarding AI technologies may be problematic in instances where the biological and legal definitions of parentage do not overlap.⁴⁵ While Nigerian law recognizes parental inheritance for children, legal ambiguity is created with the use of AI, particularly with donor gametes.

Islamic law of inheritance follows the principle of lineage known as *nasab* without deviation. An-Na'im (1998) argues that Islamic laws of inheritance make it almost impossible for children born through AID to inherit from their so-called fathers because of the constraints imposed by biological lineage.⁴⁶ The Qur'an (Surah An-Nisa 4:11-12) has laid down the rules of inheritance and makes it clear that blood relations should dictate who the heirs are. A child born through AIH within wedlock is entitled to inherit from the father, while a child born through AID is not entitled to paternal inheritance. This differentiation made between biological lineage and legal parentage depicts the gap existing between Nigerian and Islamic law on artificial insemination.

Nigerian legislation and Islamic jurisprudence alike exhibit ethical concerns regarding AI. The use of AI technologies in Nigeria is heavily influenced by cultural and religious attitudes. Research by Chisaa Onyekachi Igbolekwu suggests that ethical concerns around AI are often associated with the commodification of human reproduction and the abuse of vulnerable couples.⁴⁷ The lack of laws leads to a greater possibility of unethical behaviour such as unauthorized sperm donation and the exploitation of fertility treatments for monetary purposes.

Islamic scholars show concern about AI's ethical consequences in cases of assisted reproduction. The authors Chamsi-Pasha and Albar (2015) assert that AID should be in accordance with *Maqāsid al-Shari'ah*, which protects family lineage, morality, and social order. The International Islamic Fiqh Academy (IIFA) has issued rulings forbidding all forms of AID that involve introducing a third party with genetic material because of the possible damage to the family unit. Scholars

⁴³ Simisola O. Akintola and Olohikhuae O. Egbokhare, 'Parenthood: Is the Law in Nigeria Fit for Assisted Reproductive Technology?' (2018) *Indian Journal of Medical Ethics* <https://doi.org/10.20529/IJME.2018.012> Accessed 18 March 2025.

⁴⁴ Op Cit (n. 35).

⁴⁵ Op Cit (n. 22).

⁴⁶ An-Na'im, A. A. 'Shari'a and Positive Legislation: Is an Islamic State Possible or Viable?' (1998) *Yearbook of Islamic and Middle Eastern Law Online* https://brill.com/abstract/journals/yimo/5/1/article-p29_1.xml Accessed 19 March 2025.

⁴⁷ Op Cit (n. 20).



contend that AID should only be made available to couples who are intolerably childless and, were permission to be granted, its practice will need restrictions based on ethical and religious dictates.⁴⁸ Looking into the similarities and differences of the jurisprudential features of Nigeria and Islam and artificial intelligence shows a common point of concern which both measure religion and ethics. Even though the Nigerian legal framework is quiet on the matters of artificial intelligence, there are some encompassing ethical and theological instructions within Islam that aids in placing AI. Both systems have been seen to recognize the importance of reproductive rights but their responses on parentage, legitimacy and inheritance tend to differ. Scholars like Ayanleye and Mohammed have pointed out that there seems to be a gap in the existing laws concerning Nigeria AI and propose that any legislation attempts made should take religious and cultural sentiments into account. It may be possible to unify the dispute by combining moral and religious philosophy with scientific advancement to gain legal peace for those wanting to obtain AI services within Nigeria.

6.0 Findings

The study of artificial insemination (AI) within Nigerian law and Islamic law offers some significant insights. First, there is no comprehensive legal framework within Nigerian law that caters to AI. The Constitution of the Federal Republic of Nigeria (1999, as amended) provides privacy and family rights in Section 37, but is silent on ART, hence creating an enormous legal gap. Even though the National Health Act 2014 regulates the medical field, it is silent on parental rights, the status of child born out of wedlock, or the legal identity of children generated through AI. Such lack of legal precision leaves gaps for parents using AI to ever question the legitimacy and the issues of successional rights.

Second, Islamic law differentiates sharply between homologous insemination (AIH) and heterologous insemination (AID). AIH, which is when the husband's sperm is utilized, is accepted by most scholars as long as it takes place in a valid marriage. On the other hand, AID which involves the use of a sperm donor is highly disliked as it brings in foreign genetic material which raises questions on *nasab*, legal parenthood, and claims to estate. Islamic scholars, for instance, Yusuf al-Qaradawi strongly believe that AID is like *Zina* (adultery), thus any child born out of AID is considered illegitimate by *Shari'ah* law.

Thirdly, the lack of laws regulating AI in Nigeria has created problems with regards to the inheritance of AI children. While the Wills Act and customary laws permit children to inherit from their parents, Nigerian law does not define the inheritance rights AI children have. Islamic law, on the other hand, is known for its rigid rules around lineage-based inheritance. A child resulting out of AIH within marriage is in principle entitled to inheritance. However, a child that is a product of AID is not considered a legal heir under Islam. These differences create legal and moral dilemmas in a nation governed by both religious and secular laws all at the same time.

Lastly, AI is affected by numerous misconceptions greatly rooted in culture and religion in Nigeria. In Southwest Nigeria, a study revealed that, while some Muslims do perceive AI as beneficial, some oppose it for what they consider 'meddling with nature.' There are other concerns that arise

⁴⁸ International Islamic Fiqh Academy, Test-Tube Babies (In Vitro Fertilization), Resolution No. 16 (4-3), 16 October 1986 <https://iifa-aifi.org/en/32254.html> Accessed 20 March 2025.



with respect to the monetization of human reproduction, especially in the absence of legal protection that may lead to exploitation. The absence of laws enables unethical activities, such as anonymous sperm donation, which complicates legal disputes of parenthood and inheritance even further.

7.0 Conclusion

The lack of a specific legal framework on AI has made matters of paternity, parentage, illegitimacy, and inheritance tangled in a web of ambiguity in Nigeria. Even though Nigerian Law recognizes reproductive rights of citizens, there is no existing law supporting AI which is very much unlike Islamic law that allows artificial insemination with husband's sperm (AIH), but does not allow Artificial Insemination by Donor (AID) due to the need to protect lineage. This dichotomy of religion and the law puts many couples that require the use of AI in a difficult situation when it comes to court because the judges both want to facilitate the recognition of parents and the children, and grant the parents the right to decide how to pass their estate when they die. Furthermore, the acceptance of AI in this country is deeply clouded by ethical issues, ranging from the concern of human exploitation to AI commercialisation. Nigeria stands in dire need of formulating explicit legal rules targeted at giving guidance necessary for defining and protecting the core values, rights and responsibilities of all stakeholders; which includes concrete and protective structure with Islamic ethics.

8.0 Recommendations

While AI continues to disrupt reproductive technology, Nigeria needs to start defining a legal and ethical framework and how it impacts the secular and religious divide. AI-assisted reproduction needs a comprehensive regulation surrounding it in the form of an ART law that defines the legal status of AI conceived children, parental rights, and inheritance. Ethical provisions alongside Islamic jurisprudence ought to be included. There is an urgent need for legal ruling on parentage and inheritance which can be claimed by secular and *Shari'ah* courts, making sure there is no conflict in AI issues which requires judicial activism.

There is also a need for legal frameworks to ensure transparent and ethical management of fertility clinics. The Nigerian Medical Association (NMA) and the Ministry of Health need to create the policies, and a national ART regulatory body should ensure that these policies are followed. There should be campaigns to inform the people concerning AI reproduction and integrate religious authorities to create a balanced response to modern medicine and ethics.

In order to protect AI-created children, Nigerian legislation must define their legal and succession rights along with a proper mechanism for recording AI births to avert controversies. More interdisciplinary work is required to bridge non-religious and theological approaches on the subjects concerning AI. The Integration of AI with reproductive health can be done responsibly through the policies developed by the Nigerian Law Reform Commission which should spearhead these efforts. Hence, these measures will assist Nigeria in establishing a comprehensive legal framework that promotes reproductive rights, sets legal boundaries based on ethics, considers religious beliefs, and welcomes advances in technology.