

Human Milk Banks: Milk-Kinship and Matrimonial Prohibition in Islamic Sharī‘ah and Modern Law

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Abstract

This paper makes an investigation of human milk bank status in Islamic world. The new development in donating human milk through human milk banks by a traditional wet nurse has given rise to a new debate on the logic of Islamic milk kinship. Also, to contemporary challenges to Islamic milk kinship law. It further explore, the kinship establishment from the sharing of milk and the traditional Islamic law dynamic responsiveness to time and place. In the present article, this concept is discussed in detail in the light of the teachings of Qurān, Sunnah and critically evaluation a fatwa of Egyptian scholar Yusuf Al-Qarḍāwi in favor of human milk banking. It has inculcated the case study in Kuwait and overseas the UNCEF report. However, it is medically proven that there is no substitute for human milk and, therefore, it can't be replaced with any other types of milk (animals or formula milk). It is of moral importance that the love and care a nursing mother provides for a vulnerable infant can never be substituted with a corporate personality, as a milk Bank.

Key Words: Breastfeeding, Islamic Sharī‘ah, Milk Bank, Milk Kinship

Introduction

Breast milk is recommended form of eternal nutrition for all infants, including preterm babies. In Islamic law, breast-feeding an infant by a wet nurse is a permanent ground of marital prohibition as it creates milk relationship¹. The continued advancement of Western societies in the field of science and technology confronts the Islamic law. The Muslim scholars addressed the contemporary challenges to Islamic law, in order to discover new directions within the Islamic legal traditions. The situation, however, gets complicated when the sources of Islamic law are fixed, absolute, constant and undeniable. It utilizes to meet such contemporary issues as a result of different technological advancements.

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My paper makes an attempt to explore both under Sharī‘ah and modern law one of current issue known as ‘ Mother’ s Milk Banks’ which are used to handle and distribute large quantity of donated and expressed breast milk. In the world, thirty five countries have active milk banks, but none of it is a Muslim country. The only proposed milk bank in the Muslim world was a pilot program in Turkey but that was stopped due to religious concerns. However, experimental milk exchange’ program on small-scale has been initiated in two Muslim countries i-e Kuwait and Malaysia. The question arises, how traditional Islamic laws discuss and resolve in this regard both from within itself and/or by engagement with factors extraneous to it?²

Islamic Traditional Law and New Directions to Explore It

The idea of ‘milk banks’ in modern times in comparison to traditional Islamic Laws is answered secondly, first is to throw light on that is or isn’t the traditional Islamic law dynamic responsive to time and place? The answer to this question is affirmative where Islamic law is claimed to be a reactive and evolutionary one.³ Shaheen Sardar Ali reflects upon that “how Islam and Islamic law are internalized and practiced in diverse communities without privileging one over the other?” All the advancements of the twentieth century demand to talk about and discover both the ‘fixed’ and ‘moving’ aspects of Islamic law. It helps to understand in depth, particularly, the subjects that requires interface between Islamic laws and scientific developments. Contemporary demands the responses of Islamic law to scientific advances, specifically, determination of paternity through DNA testing, surrogacy and human milk banks. The demands returning to the original sources of Islamic law to determine, whether a ‘new’ socio-legal practice has ‘Islamic’ legitimacy?⁴

Islam allows thinking, researching and innovating within the limits of the religion.⁵ If we look into the entire range of human actions and their categorization in Islamic law, it needs to look into and analyze the new approaches towards contemporary issues confronting Muslims and Islamic law.⁶ The classification of human acts by God and the application of a basic principle in developing a methodology for understanding Islamic law should be kept in mind.⁷ When it is argued that something is Ḥalāl (allowed) or Ḥarām (forbidden), we must not forget the entire range of human actions that are agreed on after centuries of work and deliberations of the Muslim jurists and resulted into five different types of human action. These include

mandatory, recommended, permissible, discouraged and forbidden act.⁸ If the history of courts in Islamic states is investigated, normally only the prohibited and in some cases, mandatory, matters/affairs are debated. The matters would be considered and called 'law' according to a prevalent Anglo-American tradition.⁹ S.S Ali gives the stepwise unfolding of a problem in modern Islamic world.

- A. First is proposed methodology that consists of “factual, experiential and legal/jurisprudential aspects;”
- B. Next step should be unfolding the different layers of complexities that take us to the origins of a definite rule of law within the Islamic legal traditions.
- C. Third, understand the textual/contextual relationship and also the general/specific elements when a verse from Qurān or tradition of the Prophet Muhammad (S.A.W) is interpreted.
- D. Last step is to make an effort to get Islamic legal traditions and various forms of its interpretation in order to defeat the reductionist approach towards Islamic law. It can be done by using the many tools available within the Islamic legal system and traditions.¹⁰

United Nations Children's Fund (UNICEF) has reported that mortality rate of newborns and infants are high in Pakistan. The biggest challenge for Pakistan is to battle the high infant mortality rate. According to the recent report of State of Children in Pakistan in 2014, “one in every 14 Pakistani children (7.1%) die before their first birthday, and one in every 11 (9.1%) does not survive to their fifth birthday.”¹¹ In addition, one of the reasons for this high mortality rate is improper nutrition of infants that needs a timely action and suitable policy to overcome the situation. To protect breastfeeding, Khyber Pakhtunkhwa (KP) Assembly in Pakistan enacted the KP Protection of Breastfeeding and Child Nutrition Bill 2015 on January 9, 2015. The bill recommends constituting an 11-member Khyber Pakhtunkhwa infant Feeding Board under the law. The head of the board will be provincial health minister. The function of the board is to report violations, harms, recommend investigation. It also advises the government to design any policy or guideline for the promotion and protection of breastfeeding.¹² Under it, an eight-member committee of district Infant Feeding will also be constituted headed by Nāẓim of the district council.¹³

Malnutrition is the main cause of different disorders and sickness of children in the country.¹⁴ To overcome this problem and to safeguard children, implementation of breastfeeding law is needed immediately. Mothers' milk (human milk) is the best source and optimal nutrition for growing infants for

their survival. However, the increasing number of working women (mothers), particularly in agriculture sector and the milk deficiency syndrome are the major problems in meeting infants their nutritional requirements. Recommendations to the above mentioned bill includes to specify and allocate rooms for breastfeeding mothers at workplaces. The bill also recommends to initiate other measures protection, support and promotion of infant and young child feeding.¹⁵ The bill is not enforced yet. To save our infants on immediate grounds, many minds in Pakistan are thinking on lines to start human milk Banks in private sector purely established on charity basis under Islamic principles that donor and receiver know each other, Milk Kinship can be maintained. However, the chairman Council of Islamic Ideology on the issue of milk banks stated clearly “mother milk banks should not be permitted as use of milk from there would complicate family life and it would also not be a healthy practice.”¹⁶ He warned that the use of milk for infants from breast milk banks would complicate family. But yet it is not clear that what if such banks are only used to facilitate working mothers whereas mothers’ own breast expressed milk is used and administered to hers own baby?

Islamic Perspective of Milk Kinship:

The donor of human milk with growing global support has multiple health benefits, however, offering it to people of the Muslim faith raises importance. The religious concerns whereas clinicians in other than Muslim world may be ignorant of this challenge. The good milk is mother’s own milk, but the insufficiency of mother’s milk results into unique and unprecedented growth of milk banks throughout the world as an alternative formula.¹⁷

Under Islamic law, donation of breast milk creates kinship between the donor mother, her children and the infant who receives donated milk. Fosterage is technically known as Raḍa‘at in Sharī‘ah, that is derived from the root word Raḍā‘a, which means suckling (a mother is suckling her baby).¹⁸ It is a process through which a baby is breast-fed by a wet-nurse resulting into a relationship between the infant and the foster-mother. Islam does not prohibit the practice of donation of the breast milk and clarifies its impact on and implication for future potential relationships. It creates siblings’ relationship, therefore, forbidden to marry one another on the grounds similar to that of consanguinity.

The Holy Qurān says;

“Forbidden for you (in marriage) are your mothers, and your daughters, and your sisters, and your father’s sisters, and your mother’s sisters, and your

brothers' daughters and your sisters' daughters, and your foster-mothers (who have suckled you), and their daughters (your foster-sisters)."¹⁹

It states that Qurān directly prohibits the marriage of foster-mothers and that of foster sisters.

The same view is narrated by Ḥadīrat 'ā,shah that the prophet (PBUH) upon the approval of entry of Ḥafṣa's uncle by reason of fosterage said:

"Fosterage makes unlawful what consanguinity makes unlawful".²⁰

Two babies suckled by a wet nurse although biologically belong to two different persons are called foster-brothers and foster-sisters²¹. However, fosterage to become a ground for marital prohibition in Islam must fulfill certain conditions as given below:

(1) The opinion of the majority of the jurists is that the milk must be from female human beings.²²

(2) The milk must get into the stomach of baby, either it is through suckling or drinking from cup or a bottle.²³

(3) Breast-feeding can be through suckling by way of nostril.²⁴

(4) As regards the amount of milk, it must not be mixed with other substances. However, if it is mixed with other substances, so, the rule of predominance upheld by the majority of Muslim jurists. It would be applicable meaning "that if the quantity of human milk is greater than the other substance(s), fosterage would be established"²⁵

(5) On the point of number of suckling times, Muslim jurists are divided Shāfi'ī and Ḥanābilah. The general view, it must be five times suckling, while Ḥanafī and Mālīkī held that it does not matter whether it is a smaller or greater degree of suckling.²⁶

(6) The last and significant rule in this regard held by majority of Muslim jurists, the suckling must take place during the first two years of the infant's life.²⁷

Wet-Nursing to Donor Human Milk in Islamic World

Islamic history is evident to the fact of use of wet nurses that still persist in many Muslim countries, however, its use for preterm infants is not known. In Kuwait, for example wet-nursing or breasts for hire is a long established traditional method of feeding newborns. The use of this old fashioned method of feeding the newborns is lessened since the introduction of formula milk but the practice still persists in some families.²⁸ The donor mother is usually a relative or a family friend of the recipient infant. The

condition is placed that the family of the recipient and the donor knows each other. The base of this condition is placed on the religious faith; establishes a maternal relation between the donor person and the baby as recipient.²⁹ This forbids the bond of marriage between the offspring of the donor female and the recipient of the donor milk. Therefore, it is made obligatory under Islamic law that the family of both donor and recipient of the milk must be mutually known.

The concept and use of Donor Human Milk and milk banking is not common in its usual form in Muslim world. Although, in some Muslim nations. Reports of hospitals provide unpasteurized breast milk from donor mothers to babies of premature birth under conditions.³⁰

i) Milk Banks: A Case Study of Kuwait

Three case histories from Adan Hospital in Kuwait are discussed. It conceives the use of the new technology of human milk donation in a Muslim country. The cases are discussed and addressed in the issues involved in the effective management process of donation of milk in modern day scenario.³¹ Hospital used an appropriate and suitable method to meet the requirements of Islamic Law of milk donation.

In case 1, a baby boy of just 26-weeks was born by cesarean section.³² The preterm baby was incubated and ventilated. The preterm baby started oral feeds with expressed milk of his mother on the second day with 10 ml/kg/d initially. The mother –who was expressing about 800-900 ml/d- noticed that she had an ample amount of milk and showed her consent to donate her extra milk.³³ Twin preterm girls (*Cases 2a and 2b*) were born after two hours of the delivery of Case 1. The insufficient supply of milk was felt by the mother to meet her babies' feeding requirements and expressed her desire for the arrangement of donated human milk.³⁴ Four weeks after this, triplets (two girls and a boy-*case 3a, 3b, and 3c*) were born, again with insufficient supply of milk. Mother desired to receive DHM for her triplets.³⁵ In order to make it practical, different issues associated with DHM to very low birth weight (VLBW) infants were explained to the mothers by the neonatologist. It included instructions about the detailed medical history of donor mother and how to express milk with hygienic procedure and its preservation? The religious impact of DHM was also told explaining the religious custom of prohibition of marriage on grounds of fosterage between recipient child and

any offspring of the donor.³⁶ In order to meet both the insufficient milk syndrome and religious implications of DHM;

- 1) The consent of both the donor and the mother of the potential recipient of donor milk was taken.
- 2) A meeting was arranged between donor and the mother of the potential milk recipient infants to fulfill the religious requirement that both of them know one another.
- 3) Both families agree to the Islamic religious obligation, offspring cannot marry.

ii) Milk Donation and Modern Day Fatwa in Countries where Muslims Constitute Minority:

In the above stated cases from ‘Adan Hospital Kuwait, one can notice a most different and significant aspect of human milk donation, in a Muslim society as compared to West. The meetings of case 1 mother with case 2 and 3 mothers on the issue of breast milk donation helped to raise a bond and a kind of pledge that was continued through informal meetings between the mothers and their families.³⁷ In the western world, it is not practicable to fulfill these requirements because of different reasons. Therefore, the anonymity and obscurity of the donor mothers and the pooling of milk results in a large number of potentially unknown kinships that often discourage. The Muslim families in western societies provide donor milk from such banks to their infants.³⁸ It explains the fatwa (religious decree) given by the International Islamic Fiqh Academy (IIFA) established in 1981, based in Jeddah, Saudi Arabia, and affiliated with the Organization of Islamic Conference³⁹. In its second session that was held in December 1985.⁴⁰ IIFA adopted that;

“The establishment of milk banks should be prohibited in the Muslim world, it is prohibited to feed a Muslim child from these banks.”⁴¹

This discourages the creation of any existing western style milk banks in the Muslim world. It becomes difficult, though not impossible, to set up identification database of such donor and recipient families. Fatwa by IIFA is, therefore, in accordance with the norms and social reality of the Muslim world where no single human milk bank exists.⁴² Hassan Hathout, the doctor and expert on Islamic medical ethics, declared the Muslim family life in the West. In clear difficulties, milk banks are already working. He gives the example of Muslim couple in Oxford who made straight refusal to provide and feed their preterm baby

from the milk bank with the ‘mixed’ mothers’ milk. It was not accepted to the parents at all that their child becomes related through milk to any unknown women.⁴³

Despite the mentioned complications, however, the importance of this issue can’t be overlooked in current progressive global situation. The current awareness in society, increasing realization of the issue among Muslim scholars and other supervisory groups and bodies that issue Fatawa admits the significance of DHM in today’s world. To consider the issue and to benefit the premature infants of Muslim families of DHM therapy, the European Council for Fatawa and Research (ECFR) called its meeting in 2004.⁴⁴ ECFR is one of the few main schools of Islamic law around the world which was founded in 1997 in Dublin, Ireland. ECFR focused on issues faced by Muslim minorities in west and non-Muslim societies.⁴⁵ To tackle the challenges and threats of the modern world technology to the beliefs of Muslim, these institutions work in close collaboration with one another. Common conferences are often held by these institutions in order to share the views and Fawas of Muslim scholars.⁴⁶ In its meeting in 2004, ECFR praised the idea of human milk banks⁴⁷ and decreed that “the provision of DHM to a preterm baby in a neonatal intensive care setting does not establish kinship.”⁴⁸ The ECFR declared it permissible to

- establish human milk banks,
- donate milk to these banks, and
- receive milk from these banks.

As a result, plans for milk banks in some Muslim countries, for instance Kuwait, are therefore now being considered. This resolution of ECFR in 2004 actually revised the aforementioned fatwa of the IIFA in 1985.

More interestingly, the viewpoints of the IIFA and the ECFR about human milk-banks have been evoked by another fatwa given by the well-known modern Egyptian scholar Yusuf Al-Qardāwī.⁴⁹ The fatwa by Al-Qardāwī was a detailed answer to the question that “what are the religious ruling regarding establishing banks that will gather human milk in order to feed those babies?”⁵⁰ Al-Qardāwī opened his fatwa by commending the idea of human milk and gave three arguments in favor of his reasoning;

- i) He refers to the Qurānic verse that forbids marriage between relatives on grounds of fosterage.⁵¹ Al-Qardāwī takes raḍā (fosterage lit. suckling) in its exact literal meaning. According to him, the concept of

motherhood in this verse speaks of something that is established by suckling her breast via close touch with her and not by just consuming her milk as nutrition.⁵² Al-Qardāwī concludes his first argument in favor of human milk banking that “bottle feeding” as the result of milk banks, does not constitute kinship.

- ii) Al-Qardāwī gives his second argument in favor of human milk banks, no kinship is established when there is doubt about the identity of the donor mother or the number of suckling sessions or when the exact quantity of such milk given to the infant is not known. So far, the current milk banks are concerned, there is no proper system to gather and record information that what amount of milk has been donated by donor of the milk and consumed by each baby.
- iii) In his third argument in support of human milk banks, Al-Qardāwī says in case of a controversy in certain religious affairs and practices, Islam adopts the more lenient approach in order to provide the greater good to the followers and to avoid hardship.⁵³

iii) The Fatwa: Its Opponents and Proponents:

The aforementioned fatwa of Yusuf Al-Qardāwī has gathered opposition and advocacy from across the world. The main opposition against the fatwa validating milk banks came from Muslim and Arab world. The name of the physician and consultant of Islamic medicine at the King Fahd Center for Medical Research & King ‘Abdul ‘Azīz University in Jaddah- Muhammad Ali al-Bar. One of his paper titled, “Bunuk al-Ḥalīb” (Milk banks) is worth mentioning in this regard.⁵⁴He criticized the key religious, social and medical shortcomings involved in the establishment of milk banks in the Muslim world. Along other scholars of the time, he raised several objections on fatwa. The very first objection was the idea of milk bank is under a complete western cover totally different from cultural and social norms of the Muslim world⁵⁵. The only choice available to a newborn is a wet nurses or other lactating mother within the family or neighborhood. Similarly, the use of milk from cows is also an alternative source for human milk banks. Another source can be herbs like caraway. Al-Bar further highlighted the risk and problem involved in the establishment of human milk banks in developing countries. The less technological developments in these countries can not ensure the availability of hygienic or disease-free milk from banks.⁵⁶

The second objection was raised against the first argument of Al-Qarḍāwī's fatwa concerning the exact meaning of raḍā'at (*suckling*). Āl-Qarḍāwī in his first argument departed from the view adopted by the four Sunni schools. A clear majority of the Muslim jurists within the four Sunni schools affirmed, "suckling or consumption in any mode like suckling, bottle-feeding, pouring in the throat or in the nostrils, to the stomach of the baby, institutes kinship."⁵⁷

The third objection is raised against the second argument of Al-Qarḍāwī's fatwa that no kinship is constituted, according to the majority of jurists, if the the donating mother or the quantity of milk given to the baby is unknown. The credibility of this opinion is not questioned but a counter-argument is made. It says that the opinion of Al-Qarḍāwī can be justified only if doubtfulness (*shakk*) about the donating woman or the amount of milk already exists rather than to create doubtfulness by ourselves as a defense that fosterage does not institute kinship in case of doubtfulness.⁵⁸ Doubtfulness must not be created if it does not exist.

The third argument of Al-Qarḍāwī's fatwa of adopting either 'more cautious- which fits to private matters- or 'more lenient'- which fits to public affairs- if there is no clear ruling in the Qurān and Sunnah is also responded.⁵⁹ Ali Al-Qarḍāwī who is professor of Islamic Law in Qatar University and also a fellow of both the ECFR and the IIFA, has referred to a tradition of the Prophet (PBUH). He states that once a black woman made a claim about a married couple that she had been sucked by both the husband and wife and as a result the marriage between them must come to an end because they had developed kinship. The husband refused the accusation made by her and went to the Prophet Muhammad (SAW) complaining of the lair woman. The husband was advised by the Prophet (PBUH) to divorce his wife in the light of the claim made by woman black. The reference of Al-Qarḍāwī to this tradition indicate that "rulings in this regard should be based on 'adopting the more cautious' approach."⁶⁰

Although there was a large number of opponents, Al-Qarḍāwī's fatwa too collected the support of physicians and religious scholars during the discussions/session of the IOMS in 1983 and the IIFA in 1985. Fatwa was ratified by Ali al-Taskhīrī of Ja'fari school who was an Iranian Shia'ī scholar on the basis of first argument of Al-Qarḍāwī ⁶¹that the baby should suckle the milk directly.⁶² However, the fatwa issued by Al-Qarḍāwī in 1983 took nearly twenty years before it could gather the agreed support of the supporters and followers of the European Council for Fatwa and Research (ECFR) UK in 2004.

Towards Conclusion:

It is medically proven that there is no substitute for human milk and therefore it can't be replaced with any other types of milk (animals or formula milk). This is the main ground for the introduction of Human Milk Bank in modern Western societies.⁶³ Donor human milk (DHM) is a substitute when the mother's own milk is not available.⁶⁴

Its use varies across the world. For instance currently in the UK, 17 human milk banks are providing donor breast milk to 50–60 neonatal units.⁶⁵ The procedure used to deposit and withdraw human milk from such banks is such that a very hygienic way is used to extract the milk from donors, and thereafter kept in its state of natural liquidity to keep its quality in well-preserved form.⁶⁶ In milk banks, all donor milk is frozen under Holder pasteurization where milk is heated to 62.5 °C for 30 min in order to render HIV, cytomegalovirus and other viruses inactive.⁶⁷ However, the nutritional and immunological properties of breast milk are also affected by pasteurizing milk in this way.⁶⁸ According to an estimate, 34% of the small amount of immunoglobulin G is destroyed, although most of the secretory immunoglobulin A remains (0–30% destroyed).⁶⁹

The question, therefore, strikes the mind that is donor milk a perfect substitute for mother's breast milk or wet nurse milk? As donor milk is usually provided by women who delivers pre-term and the milk is usually pasteurized, therefore, it lose its effect of mother's own milk,⁷⁰. It has advantages over formula milk. Now, if we see the process of milk preservation from the legal point of view, it is not a pure milk from a single donor but a mixture of human milk from a number of lactating women with unknown identities.

Conclusion:

The fatwa passed by Al-Qarḍāwi could not gather collective support from either IIFA or Islamic Organization for Medical Sciences (IOMS) established in 1984 based in Kuwait.⁷¹ IOMS during its session in 1983 agreed with overwhelming majority of the participants to discourage milk banks in the Muslim and Arab world. However, it was added that in case of obvious necessity, strict procedures to donate milk should be followed. It requires that the name of donating woman must be on each bottle in writing with complete details. Similarly, it needs the registration of the names of the donating woman and each infant who consumed the milk. All this information should be provided to the families of both the woman and the baby who benefited from the milk.⁷²

The opinion held by a majority of the jurists of invalidation of establishing milk banks in Muslim states in par with the current western method is in line with the spirit of the Sharī'ah. Sayed Sikandar Shah opines that it is rational to credit it as the preferred opinion for;

- i) Such Western style milk banks would change the motherhood from a value to a commodity because it facilitates all those women who do not bother to nurse her baby; and, on the other hand, the destitute woman neglects her religious duty towards her own baby and sells her milk to the Milk Bank. The neglecting of her duty of suckling her infant baby not only affects the psychological development of a child but is disadvantageous for the woman. It is a medically proven fact that lactation helps restore a woman's uterus into its natural state and works as a natural contraceptive to reduce the chances of conception⁷³ and hence contributes towards spacing of births.
- ii) Under complete ban of Western style milk banks, Muslim mind would be inclined to opt to some other permissible way of feeding a baby.

The main purposes of Islamic Sharī'ah is to safeguard the lineage of a person, whereas the idea of Milk Banks may lead to mixing up and doubt concerning lineage. Milk kinship is not an obstacle to use donor human milk if strict conditions are met. In the current wave of globalization and technology advancement if we need to substitute Islamic institutions of fosterage with that of a Human Milk Bank, we have to Islamize (in case of extreme need) it with adopting a system of registration and maintenance of complete data of the women, sellers or donors of their milk, and the potential babies who are going to be fed with such milk. However, risk still persists, mothers who could not breastfeed may access strangers on social media to get human milk to avoid the cost of registered milk banks as is a growing practice in Australia and West. In addition to Islamic legal stance and reservation about such milk banks, it is of moral importance that the love and care that a nursing mother provides for a vulnerable infant can never be substituted with that of a corporate personality such as that of a Bank.

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