ORIGINAL ARTICLE

An Islamic Perspective in the Fiqh (jurisprudence) of Banks of Milk

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ABSTRACT

This study tackles a contemporary issue belongs to what is called (AL-Nawazil Fiqh) (Jurisprudence of Contemporary Issues). The issue discussed in this study is the banks of milk. It is a new issue as it appeared in the seventies of the twentieth century in Europe and U.S.A. Banks of milk have spread in the same way banks of blood, corneas, sperms and prosthetic limbs did. The idea of banks of milk can be simply summarized by collecting milk from volunteer mothers (or paid mothers) who give their milk either because they have more than what their infants need or because the mother has lost a child. The milk is taken from the mother by a sterilized method and kept in sterilized bottles at banks of milk. Opinions and (Fatwas) in this connection have varied widely. Some scholars have disapproved the issue and some have approved due to their different opinions in the issue of breastfeeding. This study will focus on reviewing and discussing both opinions and views and discuss the reason of dispute among scholars concerning establishing banks of milk. This study also will discuss the scholars’ different opinions about the meaning of breastfeeding, its forbidden quantity and its method in an attempt to come up with a suitable legitimate judgment that is compatible with our Muslim societies.

Key words: jurisprudence of contemporary issue, Shari’ah (Islamic law), Banks of milk, breastfeeding, infants, forbidden, sisterhood, preserving kinship.

Introduction

All praise is due to Allah, who has created, made and guided and peace and blessing be upon the most noble creature our leader, beloved and intercessor Muhammad (SAWS). Among the many blessings Allah has bestowed to His believers is making His Shari’ah (Islamic Law) based on certain foundations among the most prominent ones is its being firm, flexible and can keep up with life in every time. No doubt, peoples’ needs and requirements are not only endless and unstoppable but also renewing and changing within time. The Islamic Shari’ah, being firm and flexible, can meet people’s needs no matter what their time is. Undeniably, such characteristics have made Shari’ah’ah’s needs matter what their time is. The scholars are required to understand the true essence of Shari’ah’s needs in order to come up with a legitimate judgment in the light of Quran and Sunnah without going into extreme or negligence. Banks of milk is a new idea but has become an issue of the day. Many sessions have been held to discuss this issue and many scholars have given their judgments either in approving or disapproving. In this study, I will review both opinions concerning approving and disapproved the idea of banks of milk and discuss the points of dispute between the two parties. I also will state the most important results reached in this study.

Part One: Opinions that Have Approved Banks of Milk:

Some of contemporary scholars have approved establishing banks of milk relying on some evidences. The following are the scholars, their opinions and the evidences they have presented in this connection:

First: Shaikh Abdu Lateef Hamza, Grand Mufti of Egypt, has stated that the milk from such banks is not forbidden. He has relied on Abu Hanifah Fiqh which states that milk of bank is not forbidden as long as it is...
taken from a woman, given to the infant through the mouth and is not mixed with water, medicine, sheep milk, any solid food or another woman’s milk as it has been agreed upon by the scholars of Hanafi Madhab (Hanafi’s school of law). (Kurtibi, 2004).

Second: Dr. AL- Qaradawi says that banks of milk are approved due to two things:

Identifying the meaning of breastfeeding:

Dr. AL- Qaradawi believes that the reason that makes people disapproving this kind of nursing is the ‘mother feeder.’ He says “The reason behind people’s disapproving such kind of nursing is the issue of mother feeder depending on Quran’s statement in relation to the forbidden women: “your [milk] mothers who nursed you, your sisters through nursing.” {Holy Quran 4:23}. The concept of motherhood stated by Quran is not only constituted by consuming the mother’s milk but rather by absorbance and by the infant’s spiritual attachment manifested by the mother’s compassion. From this concept of motherhood, sisterhood and brotherhood in nursing is generated. “So, it is important to think about the words in this connection which all speak about breastfeeding, mother feeder and nursing. The meaning of all these words in the language of Quran and Sunnah is quite clear because they all refer to the idea of absorbing or (suckling) the mother’s breasts and not only tonurturing by any way.” {Al Owathi, 1991}.

2. Suspecting breastfeeding:

Suspecting breastfeeding doesn’t make it forbidden. The mixed milk is not judged as pure one. The researcher relies on Youssef’s father’s saying—Abu Hanifa’s narratives— which states: “in case mother’s milk is mixed with another mother’s, the judgment is for the most dominant one.” {SheikhNitham 1310 A.H}. The features of the dominated cannot prevail over those of the dominator. Therefore, the act of disapproving cannot be confirmed but by a clear evidence.” He concludes his speech with a statement by Imam Nawawi “Disapproving breastfeeding is not confirmed depending on a mere suspicion in breastfeeding or on the number of the forbidden breastfeeding because what is approved cannot be disapproved by only a suspicion.”{AL- Nawawi, n.d}.

Three: The statement by the Egyptian Fatwa House:

The Egyptian ministry of Health has sent to the Egyptian Fatwa House asking whether establishing banks of milk is approved or not. The House has answered by saying that nursing infants from such milk does not disapprove the marriage of the daughter of the mother who has given this milk. The Fatwa House gives this statement depending on Abu Hanifa Mathhab which states that breastfeeding is not disproved as long as this milk is from a woman, taken through the mouth, unmixed with water, medicine, sheep milk, solid food or with another woman’s milk as it has been agreed upon by the scholars of Hanafi Mathhab {AL- Mazni, 1990}.

Part Two: Opinions and Reasons of Disapproving Banks of Milk:

Some scholars have disapproved banks of milk and the act of nursing the infants withthis milk. According to these scholars, feeding the infants such milk makes them brothers and sisters in nursing. Thus, young men cannot marry young women nursed by milk of banks. Some of these opinions are:

First: Most of the scholars of Islamic Fiqh Academy (emerging from Organization of the Islamic Conference) have disapproved banks of milk. During the Conference second session, held in Jeddah (from 22th to 28th of Dec. 1985) a medical and Fiqh study was presented to the Academy about banks of milk which had stated:

1. The banks of milk are a western experiment which has some negative technical and practical aspects therefore, it had received little attention.
2. Islam deals with the rules of breastfeeding (nursing) exactly as it deals with the rules of kinship. Shari’ah’saim is to maintain and preserve kinship. Banks of milk can lead to suspicion and kinship mixing.
3. The social relationships in the Islamic world are responsible to provide human milk to premature infants or to those in need of milk (natural breastfeeding). This responsibility makes banks of milk unnecessary. Thus, the Islamic Fiqh Academy has decided:
   a. Disapproving banks of milk in the Islamic world.
   b. Forbidding nursing infants from such banks. {Academy of Islamic Fiqh, 1985}.

Second: Fatwa by Sheikh Abdul Rahman Al Najar in which he says:

“This project is certainly forbidden according to Shari’ah. With my respect to Sheikh Abdu Latef Hamza (The Grand Mufti of Egypt), I absolutely don’t agree with his opinion. The statement of disapproval is clear as it had been disapproved by AL-Shafi’i Mathhab. As milk is forbidden the moment it comes out from the breast, so
all its derivatives like cheese, butter or whatever is mixed with like flour, water on condition that the liquid, used
to nurture the infant, has dominant aspects of milk like taste, colour and smell. The condition of disapproval is
drinking the liquid as a whole {AL-Owathi, 1991}.

Third: Reasonable Evidences why Milk of Banks is forbidden:

1. Banks of milk can create a state of cause because a woman might be married to a man who had been
nursed by her or her mother. Such a thing is unacceptable in Islam because it opens a possibility of committing a
wrong act. One of the foundations of Islamic Shari 'ah is blocking such possibility.

2. Approving banks of milk can open a possibility of enacting definite wrong acts for the sake of avoiding
indefinite wrong acts and this is intolerable in Shari 'ah {AL-Saidan, n.d.}. In the case of a motherless infant,
either a wet nurse is hired to breastfeed it or asking volunteer women to do the job. Moreover, with the highly
developed industry, there are many options, like formula feed that can replace the mother’s milk.

3. Although the formula feed cannot be as good as the natural mother milk, yet it can do the job. Thus the
need to banks of milk becomes unnecessary.

Part three: The Essence of Dispute:

Dispute between the two parties is based on previous disagreement which comes in two aspects:
Aspect (1): the meaning of breastfeeding upon which the Islamic Shari 'ah has stated the disapproval. People
see that whatever reaches the infant’s stomach is nursing whether it is through the infant’s mouth or nose
(IbnRushd, 2004, and AL-Shirbeani, 1994). Aspect (2): The suspicion that mother’s milk might mix with unknown other mothers’ milk. Suspection in
those who breastfeed and the number of breastfeeding does not disapprove breastfeeding because in Shari 'ah the
approved is what commonly followed and disapproving what is approved cannot confirmed but by an evidence
{AL-Qahtani 2010}.

Generally speaking, whatever the preponderant opinion is, the researcher believes that establishing such
banks in the Muslim countries is marred with troubles and caution because these banks, even if they are
approved in Shari 'ah terms, they are unacceptable in terms of health, economy and society. Moreover, it is not
required to mimic the western world but we have to look for whatever is useful to our life.

Conclusion:

The main results achieved by the researcher are:
1. Contemporary scholars have taken interest in this issue because it is related to (Fiqh Al Nawazil) in an
trypt to reach suitable and legal rules to establish banks of milk in the Muslim societies.
2. There have been different opinions and Fatwas by scholars in approving and disapproving.
3. There have been many rules, restrictions and recommendations stated by the contemporary scholars in
this connection. Some of them have approved the legitimate and noble aim of banks of milk in case these rules
and restrictions are followed; otherwise, banks of milk are illegitimate.

4. The heavy expenses caused by establishing banks of milk. Moreover, the milk of such banks is prone to
the possibility of microbial contamination and is not as good as the mother’s natural milk which provides great
benefits for the infant and the mother as well.

5. Banks of milk might turn to be commercial banks. Rich mothers will be in no need to nurse their own
infants. Poor mothers will be tempted to sell their milk to the banks with good prices depriving their infants
from their own natural milk and feed them with formula which endangers the infant.

References
AL Bahuti, Mansour Bin Younis, No Date, Scots aboard the mask for persuasion, Beirut: House of scientific
books.
Al Bar, Mohammad Ali, Banks of Milk, Magazin of Islamic Jurisprudence Academy, A magazine issued by The
Islamic Jurisprudence Academy (Emerged from The Organization of Islamic Conference). 2/262.
Publication: Islam and the Contemporary Medical Problems.
AL- Saidan, Waleed Bin Rashid, “Shari’ah opinion in Some of Medical Issues”.


IbnRushd AL Hafeed, No Date, *Beginning of the end of the industrious and frugal*, Cairo: Modern House.


The Noble Quran.

Yahaya Bin Sharaf Al Nawawi, No Date, *Total polite explanation*, Beirut: House of Thought.