

Study the Rights of Son Born to in Vitro Fertilization

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ABSTRACT — Embryo donation is one of the obvious methods of infertility treatment. It has played an important role in fertility and treatment of infertility in recent years. Embryo formation in laboratory and its transfer to uterus is a special kind of in vitro fertilization that according to the importance of family and its role in the establishment and survival of human societies and Islam emphasis in various versen on strength of family basis has attracted the attention of many researchers. It has different legal, religious, medical, biological and philosophical dimensions. This is an aspect of in vitro reproduction i.e. reproduction with the help of medical technique without sexual act. In this method, sperm of man and oocyte of woman inseminate in laboratory and then resulting embryo transfers to the uterus of applicant woman. After this, some questions raise including:

- Is rent or loan of a uterus other than mother's uterus permissible?
- Does the formation of embryo in laboratory is allowable in legal term and then its transfer to uterus?
- Who belong the born son to?
- Husband and wife who want child bearing or owner of uterus?
- How will be legal relationship of baby with beneficiary individual is in terms of ancestry?
- Should the process of embryo donation perform in the framework of one of the contracts? Present research is analytical- descriptive.

KEYWORDS: embryo donation, jurisprudence, Iran's law, Islam

Introduction

Marriage is one of the most important affairs that has been emphasized by Islam religion. One of the most important characteristics that Islam religion has raised about supporting marriage is reproduction and development of human generation. Therefore, this aspect of marriage that causes further blessing and intimacy between wife and husband and adhere them to married life influences other aspects of family life. Sometimes failure of spouses in child bearing leads to life disruption. However, in vitro fertilization methods have had signification progress, but could not cause the satisfaction of scientists of other sciences. Generally, reproduction discussion has special legal, religious and social sensitivity and limitations in Islamic culture. If foreign involves in fertilization, the role of religion will emphasize as determinant factor in legal discussion. Therefore, parallel with the advancement of this technology it is necessary to law make and systematize these discussions so that according to human need for this technology these methods to be consistent with religious rules and legal principles. Iran legislator took an important step in this direction with enactment of the manner of embryo donation to infertile spouses in 2004 and its executive code in 2005. However, this law is under question, but it is useful to direct legal aspect as a starting point.

Definition of artificial insemination

Insemination vocabulary means to make pregnant and fertilization means to become pregnant. Artificial insemination implies the insemination of woman with artificial devices and without intercourse, i.e. spermatozoon enters uterus with the help of medical devices (Safae & Imami, 2009, p 325).

The kinds of artificial insemination

a) Insemination of husband's sperm to spouse: In some cases despite the fact that husband is physically health and sperm can fertilize woman, but he cannot fertilize spouse due to some reasons. In this case, sperm of husband inseminates to wife using aid techniques of reproduction. In this method, since artificial insemination is made via injection of husband's sperm to legal spouse, the action is completely allowable and the born child is permissible and lawful (Qazvini, 2004, 183). Insemination of man's sperm to uterus of unmarried woman without intercourse: In some cases, that husband has not the capability of fertilization of spouse or lacks sperm the only available solution is to use the sperm of a strange man for fertilization of woman. Regarding the legitimacy of this action according to 1-7 verses of Moamenoun Sura, it has noted that primary rule and principle about actions regarding vulvas is the incumbency of it' protection from everybody and every kind of action unless spouse and slave that are not subject to this general rule i.e. every action regarding vulva that is not between man and his wife or slave is unlawful unless a reason is found that divine law accepts it and can allocate all of these verses (Hazrati Shahin Degh, 2009, p80). Therefore, Vulva protection from sperm entry of an alien is one of the affairs of protection from stranger so protection from stranger requires sanctity of non-husband's sperm entry to uterus of woman (Qazvini, 2005, p 47). Most of the great jurists believe that such a method is thought provoking. For example, Ayatollah Khouee states that woman insemination with semen of a strange man is not permissible whether a stranger or husband (Qazvini, 2005, p 186) makes insemination.

b) Insemination of foreign woman oocyte to uterus of infertile woman: This method is made where the reason of infertility is the lack of woman oocyte. In this case, the oocyte of foreign woman is injected to uterus of infertile woman so that a child results from this oocyte and the sperm of infertile woman's husband after her intercourse with her husband.

Most of the jurists believe that this insemination method is not permissible like previous methods.

For example, Ayatollah Safi Golpaigani referred to Sanctity- based verse of this method in response to a request for opinion (Jaafarzadeh, 2008, p 404).

c) Insemination of foreign sperm and oocyte in laboratory environment and its transfer to uterus: In this method, the Spermatozoon of woman and man is extracted and prepared for transferring to uterus- There is no doubt about permit of this stage since it is not among forbidden things. Of course, Sanctity of this action due to commit Sin is outside the scope of this discussion. Then, the mixed spermatozoon is planted inside the uterus. It has been said regarding spermatozoon planting in a uterus that is unlawful for owner of sperm that since in related narrations stewardship in spermatozoon transfer has not made a condition; this case is subject to prohibition. In addition, opinion of Ibn Syabeh implies the prohibition of this assumption. Since according to these narrations where occurrence of marriage is approved, caution is obligatory. Therefore, it includes such an assumption that marriage has not certainly occurred (Haram Panahi, 2005, p 99).

d) The combination of sperm and oocyte of husband and wife and transfer of resulting embryo to uterus of foreign woman: This method is made in two forms. First, embryo donation in which infertile spouses have sperm and oocyte and they are not healthy, but woman can carry embryo in her uterus i.e. they use the donated embryo of another spouses for treatment. Second, Uterus rent in which spouses have sperm and oocyte and they are healthy, but woman cannot breed embryo in her uterus due to some reasons. In the method of embryo donation, patient spouses use the embryo that results from sperm and oocyte of another man and woman in laboratory whether there is marital relationship between them or not. Donated embryo transfers to uterus of wife. Therefore, embryo donation is one method of infertility treatment in which man's sperm and woman's oocyte taken and put in vicinity of each other in laboratory environment. After fertilization and primary divisions, it transfers to Uterus of applicant woman. This method is shown as I.V.F i.e. fertility in test tube. In addition, we can use embryos that have previously freezed, but they have lower percent of success (See Nayebzadeh, 2003, p 27; Ghanem, 2000, p 235). The subject of uterus rent has sometimes studied under the subject of embryo donation since embryo donation is made in uterus rent. It is clear that in uterus rent, the purpose of embryo donation is to return embryo to original owners after carriage and birth stages by third woman, but in embryo donation, the born baby is given to receiving spouses. In other words, patient is receiving spouses of embryo in embryo donation. However, donator spouses of embryo are patient in uterus rent.

Regarding legitimacy of this method, most of the jurists including Imam Khomani, Ayatollah Khamenehee, Makarem, Safi Golpaiegani, Ardabili and Sanaee believe that it is permissible (Rezania Moalem, 2004, p 340).

Superiority of embryo donation over sperm donation:

Embryo donation has superiority over sperm donation in two aspects. First, here there are not the sensitivities of Sex cell and sperm donation. What is made in embryo donation, of course, the introduction of embryo donation is donation of sperm and oocyte to laboratory and insemination occurs in laboratory. There is no direct contact between sperm and foreign uterus and this matter is very effective in judgment. Second, in sperm, donation sex cell directly transfers to applicant uterus with the help of devices and there is a concern of mixing fire. Since there is a weak probability, that born baby to be from sperm of husband not from donated sperm. This is why sperm donation of a stranger is unlawful, but there is not such a concern in embryo donation. Since embryo transfers to uterus in laboratory environment and there is not a concern of mixing the sperm of donator with that of woman's husband who is owner of uterus.

Artificial insemination in law of Iran

According to article 1 of act of the manner of embryo donation to infertile spouses, Specialized centers are only permissible for transferring embryo that results from extra- Uterine insemination (Legal and canonical spouses). Therefore, what is acceptable by legislator among methods of extra- Uterine insemination is the transfer of resulting embryo from sperm and oocyte of legal and canonical wife and husband. This implies that the presence of marriage relationship is one of the necessary conditions of embryo donators with the observance of its conditions and barriers, but important point is that whether noted marriage in article 1 of above act is permanent marriage or includes temporary marriage. However, temporary marriage has the conditions and barriers of permanent marriage and is similar to permanent marriage in terms of effects except alimony and inheritance, but in embryo donation, one of the most important issues is responsibility and commitment in this process. This purpose is only achieved via continuity of marital relationship. There is no doubt that temporary marriage cannot replace permanent marriage with all of its advantages. The establishment of family so that to be the center of comforts, training of deserve children and the cause of cooperation and unity of man and woman is achieved only via permanent marriage (Safae & Imami, 2014, pp 27-29). According to the most reliable legal tests, the purpose of temporary marriage is not reproduction. In the act of the manner of embryo donation to infertile spouses, the terms of legal and canonical spouses has implemented that one of the conditions of being legal is registration of marriage event. It seems that marriage in noted act is only permanent marriage. In addition, the necessity of preventing its

negative consequence confirms this opinion including irresponsibility of temporary spouses with termination of temporary marriage period.

Legal nature of embryo donation contract

Embryo donation can discuss with different legal subjects including disclaimer, peace, donation and private contract.

1-Disclaimer

Disclaimer consists of waiving of owner from ownership of his/ her property with his/ her intention. Therefore, direct effect of disclaimer is to give up ownership rule including unilateral legal acts. As a result, property will be without owner: As previously stated, gamete has found possession due to usage and motivation of its use. Therefore, human right on gamete is an objective right and human can disclaim sperm or oocyte. However, this is when a person donates his/ her gamete as a stranger (medical requests for opinion, 2009, // 78-80). According to article 1 of act of the manner of embryo donation to infertile spouses, donors should be legal and canonical spouses and their specifications should register. Consequently, the owners of gamete are completely known. On the other hand, the acceptance of human objective right on gamete is allocable until stage before insemination. After insemination, human has no objective right on embryo. Since embryo is an independent creature in this stage. Therefore, the nature of embryo donation is not included in disclaimer and other unilateral legal acts.

2- Donation

Donation consists of giving property to another person as free. Therefore, donation is a free contract. However, there is disagreement about its permit or necessity (Katozian, 2002, pp3, 34). However, donation contract is revocable in some conditions. According to article 803 of civil code, donation contract is revocable when donated property to be survives. Therefore, if sperm and oocyte do not combine with each other and do not establish embryo, we can refer to donation contract. However, the formation of embryo implies the extermination of gamete and donation contract will not be revocable. If the subject is embryo donation, its transfer to uterus will be irrevocable. Another point is that however, donation is a free contract; it will be possible to impose reward condition on donor since this condition is another free purchase that will conduct under main donation in a contract (Katozian, 2002, p33). Therefore, we can note that an embryo, which hasn't positioned in uterus is regarded as property and its donation can subject to regulations of civil code, although donors receive a reward for it.

3- Peace

Peace has a wide scope in civil code. It can take place instead of a transaction and leads to its effects and consequences without having its particular conditions. Therefore, there is no limitation for peace. A wide framework will use for realization of intention sovereignty. Therefore, the action of gamete donors can make in the framework of peace. However, it be yielder since it hasn't inconsistency with human dignity.

4- Private contract

The principle of freedom of contracts that has noted in article 10 of civil code removes contracts scope from framework of certain contracts so that every contract that is not obvious opposition of law will enjoy the support of legislator. Therefore, embryo donation can make in the framework of private contract. Some layers believe that embryo donation contract is a non- financial contract between donors and authorized centers of infertility treatment, which is subject to general rules of contracts. In addition, they believe the action is free or yielder and this does not prevent giving reward to donors. If donation to be yielder, reward will be secondary (Safae, 2007, p 176). According to above materials, it appears that we should discriminate between different stages of embryo donation process because this process has particular legal load and effects in every stage. In the first stage, individuals give their gametes to treatment centers. This stage is a part of treatment process assuming infertility authentication of applicant spouses of embryo. It has rational and legitimate interest. Therefore, individuals can sale or donate their sperm and oocyte to treatment centers. In fact, human dignity does not deteriorate since gamete is not human alone to nullify its related contract. Since it provides treatment preparations of a patient is useful and pleasant. In the second stage, insemination occurs between donated sperm and oocyte, in this stage, the conditions of first stage are dominant since inseminated sperm and oocyte have not transferred to uterus. However, in the third stage that embryo transfers to uterus of applicant woman the use of titles such as sale, peace, donation or disclaimer is inconsistent with human dignity. Since embryo is carried in this stage, civil code has predicted special legal effects due to the identity and particular personality of embryo. Therefore, there is no need for its correspondence with certain contracts, but it is a part of treatment process that donors and treatment centers deserve receiving reward due to their cooperation in this process.

Resulting legal relationships from embryo donation

The problem of embryo donation and its resulting baby raise important legal problems about the relationships of interested baby and donor and receiver mother and father. We study important affairs including genealogy, custody and marriage sanctity of heir.

1-Legal relationship of baby with beneficiary's persons in terms of genealogy

Iran's law considers natural and genetic relationship as basis in the case of babies' genealogy like France's law i.e. baby belongs to owner of sperm and oocyte. Legislator believes that resulting baby from adultery does not belong to adulterer.

Since reproduction with artificial method is not adultery, there is no problem in attributing baby to genetic mother and father i.e. the owner of oocyte and sperm. However, attribution of baby to applicant wife and husband who seek child but do not have genetic relationship with her/ his is objectionable. There is no doubt that attribution of baby to them is desirable in terms of social and family. Since the owner of sperm or oocyte is usually unknown and if identifies, he/ she will not seek baby. In addition, it is possible that they attempt to give spermatozoon due to beneficence, benevolence and altruism. Therefore, it does not deserve to impose unwanted genealogy on baby (Safae & Imami, 2009, p 334). In the case of attributing laboratory embryo to woman who breeds embryo in her uterus, while baby is not from her oocyte we can say that according to the existence of natural and physiological relationship between that woman and baby, there is a kind of foster affinity between them due to breast feeding (Ayatollah Sanaee, medical requests for opinion, problems 111 and 198). However, this kind of affinity is effective only in terms of marriage ban and does not provide sufficient support for baby. For further support from baby according to verse 2 of Mojadeleh Sura and opinions of some jurists, we can say that baby is attributed to woman who breeds embryo in her uterus and legitimate genealogy relationship is established between them with all of its legal effect. Some jurists believe that if owner of uterus is other than that of oocyte, owner of uterus will also be mother of baby. In fact, baby had two mothers (Safae & Imami, 2009, p 335). If the owner of uterus has husband, the attribution of baby to husband will not be objectionable where embryo is established by his sperm, but otherwise attribution of baby to husband will be objectionable. Generally, child does not have ancestral affinity with him. Since child belongs to owner of spermatozoon, while it is desirable to attribute baby to husband of woman. In law of France, new regulations of legislator have accepted the attribution of baby to husband of woman. However, this solution does not have legal basis in law of Iran and legitimate and traditional solution is the attribution of baby to owner of spermatozoon. Of course if baby to be daughter, husband of woman cannot marry with her and this daughter will be his incestuous marriage. It is clear that there are no comprehensive regulations in law of Iran regarding artificial reproduction, embryo transfer and its legal effects. We have legal gap. There are not enough traditional rules for responding these new problems. Government should prepare a comprehensive and suitable bill that meets needs and associates with new scientific developments with the help of Jurists, law experts and using the experiences of other countries (Saffee & Imami, 2009, p 331).

Marriage sanctity of resulting child from embryo donation with applicant mother

Applicant mother shoulders the responsibility of growth and breeding embryo with transferring of embryo to her uterus.

But whether assuming this responsibility and feeding from her breast generate sanctity among baby and applicant mother and her relatives? It might be said that if baby feeds from mother's breast in due extent, she will be her/ his foster mother and foster embryo will generate sanctity. However, this reasoning is not acceptable. Since in publication of Sanctity the foster mother should breast-feed her husband and child, but in where we are she is not the owner of her husband breast- feed and baby has not any kinship with her. Therefore, such a breast- feed doesn't generate sanctity, although she gives birth to the baby. Therefore, if applicant mother breast – feeds the baby according to due amount in article 1040 of civil code, it will not generate foster sanctity. Since her husband does not play any role in this process. Therefore, the marriage of baby with applicant mother, her husband and relatives is correct. However, mental artkazyat does not easily accept the marriage of baby with a woman that has bred in her uterus and has fed from her breast.

Custody

Custody literally means keeping. Civil code has not defined this word. Some jurists believe that custody consists of stewardship and reign over training and it's belongings including child keep, lay her/ his in bed, applying Khol, washing her/ his clothes, etc (Ashtiani, p 371). We can say that custody means child keep, taking care of him/ her and regulation of her/ his relationship with external environment with observance of visitation right that has been recognized for close relatives of baby. Therefore, custody refers to physical support from child. However, mental and ethical support from baby has considered by this legal organization in both law of Islam and new law of Iran. It appears that what is emphasized by legislator in custody and training of baby is interest and happiness of baby because the responsibilities of parents in this field just provide the interests of child. Therefore, custody is that right and duty of parents. In order to support child, article 3 of law of the manner of embryo donation to infertile spouses has given the training and keeping of baby to receiving spouses of donation. We cannot give this responsibility to individuals who are not motivated for birth and keeping baby, however, these individuals to be ancestral parents of baby.

Baby alimony

Alimony literally means cost, expenditure, what spends for wife, children, and subsistence needs. It idiomatically means what requires for spending life. According to article 1204 of civil code, relative's alimony consists of providing clothes, food and housing for meeting needs with consideration of affordability of charitable person. Based on article 1199 of civil code the alimony of children is in charge of father. After the death of father or his debility in the field of alimony payment, this is in charge of paternal ancestors with observance of the closest next closet. In the case of absence of father and paternal ancestors or their debility, this is in charge of mother. When the mother is not alive or she has debility, this is in charge of paternal and maternal ancestors with observance of the closest next closet. If some individuals are equal in terms of kinship degree, they should pay off alimony in equal parts. According to regulations of civil code, alimony payment is in charge of genetic father, next paternal ancestors, then genetic mother and finally maternal ancestors. However, since embryo donators (genetic parents) do not have intention to possess

child and alimony payment, article 3 of the law of manner of embryo donation to infertile spouse's states that alimony payment is in charge of donation recipient spouses. It seems this duty just includes donation recipient spouses not their relatives. Therefore, alimony duty first is in charge of applicant man. In the case of his absence or debility, it is in charge of applicant woman of donation. Inheritance consists of relationship between two persons that due to the death of one of them the other one inherits. Noted relationship is kinship (Katozian, 2001, pp3, 170). An action includes the law of manner of embryo donation to infertile spouses regarding inheritance of child and donation recipient spouses and embryo donator spouses. Inheritance relationship is established between resulting children from artificial insemination and each one of man and woman who are owner of spermatozoon and their relatives after childbirth in uterus and after birth according to regulations of civil code (Shahidi, 2007, p 189). Some Jurists believe that they inherit from each other like legitimate parents, but it is caution in compromise relative to customary mother (Fazel Lankarani, 2004, p 395). According to this fact, that in embryo donation the issue of ancestry raises and the condition of hereditary is legitimate ancestry. Therefore, presentation of compromise title is objectionable for solving the problem of inheritance. Since inheritance, rules are imperative and non- mutual consent. Therefore, inheritance relationship is established between baby and his/ her genetic parents provided that baby to be alive in death time of testator. Of course if spermatozoon holds in death time of testator and be born alive, He will enjoy civil rights including inheritance. Therefore, the conduction of insemination after death of testator in laboratory or Uterus of alternative mother prevents the establishment of inheritance relationship, since heritage transfers to present heir with death of testator in death time. Inheritance relationship does not establish between baby and applicant spouses of donation. Silence of the law of manner of embryo donation to infertile spouses confirms this matter.

Conclusion

1- Embryo donation is one of the methods of artificial insemination that in recent years has played an important role in fertilization and treatment of infertility as a successful method. Embryo donation is an aspect of artificial reproduction. In this method, man's sperm and woman's oocyte inseminate in laboratory. Then, resulting embryo transfers to uterus of applicant woman.

2- Artificial insemination conducts in five methods

a) Insemination of husband's sperm to spouses:

This action is completely legitimate and allowable. In addition, born child is legitimate and legal.

b) Insemination of main's sperm to uterus of unmarried woman without intercourse: this method requires non- husband's sperm entry sanctity to uterus of woman.

c) Insemination of foreign woman's oocyte to uterus of infertile woman: many jurists believe this method of insemination is not allowable.

d) Insemination of foreign sperm and oocyte in laboratory and its transfer to Uterus: regarding planting sperm in a uterus that is unlawful for owner of sperm, it has been said that is subject to prohibition since stewardship in transfer of spermatozoon has not noted in related narrations.

e) Combination of sperm and oocyte of husband and wife and transfer of resulting umbryo to uterus of foreign woman: This method is made by two manners. Embryo donation and uterus rent. Many jurists including Imam Khomaini, Ayatollah Khamanehee, Makarem, Safi Gholpaiegani and Ardebili believe this method is legitimate and allowable.

3- Embryo donation differs from sperm donation. In embryo donation, sperm and oocyte are given to laboratory and they are inseminated in laboratory. However, in sperm donation, sex cell directly transfers to applicant uterus with help of devices. Here there is the concern of mixing fire. However, there is not such a concern in embryo donation.

4- According to article 1 of the law of manner of embryo donation to infertile spouse, specialized centers are only allowable for transfer of resulting embryo from extra- Uterine insemination of legitimate and legal spouses.

5- Regarding the nature of contract of embryo donation, we should discriminate among its different stages. In first stage, individual give their gamete to treatment centers. In this stage, gamete is property. It can be based on sale, donation and peace contract. In second stage, gamete inseminates in laboratory but does not settle in uterus. It is similar to first stage. In third stage, embryo transfers to uterus. Therefore, application of contract of donation and peace is inconsistent with human dignity. We should consider it as a private contract in the process of treatment of infertile spouses.

6- Born baby from embryo donation is attributed to his/ her genetic father and mother i.e. gamete donators. Legal ancestry is only established in their relationship not applicant spouses of embryo.

7- In terms of marriage sanctity, only marriage between baby and genetic father and mother and their relatives is forbidden, but marriage between baby and applicant mother of embryo and her husband does not generate sanctity. However, baby breast- feed from applicant mother in sufficient amount because condition of foster affinity is precluded.

8- Inheritance relationship is only established between baby and his/ her real father and mother (owners of sperm and oocyte).

References

- 1-Fazel Lankarani: Mohammad Javad, new methods of human reproduction in point of view of Jurisprudence and law, second edition, Tehran, 2004.
- 2- Haram Panahi. Mohsen, artificial insemination, new methods of human reproduction in point of view of Jurisprudence and law, Second edition, Tehran, Research center of Ibn- sina, 2004.
- 3- Hazrati Shahindegh. Samad, effects of artificial insemination, Magazine of education message, Tehran, 2009
- 4- Hosseini Sharif. Fatemeh, Rights of Laboratory child and surrogate mother, MA thesis, private law, Islamic Azad University, Damghan Branch, winter 2009.
- 5- Jaafari Langroudi. Mohammad Jaafar, Expanded in law terminology, Volume 5, third edition, Tehran, Knowledge treasure library, 2008.
- 6- Jaafarzadeh. Mir Ghasem, New methods of human reproduction in point of view jurisprudence and law, second edition, Tehran, Samt press and research center of Ibn- Sina, 2009
- 7- Katozian. Naser. Certain contracts period Volume 3, 4th edition, Tehran, Knowledge treasure library, 2002.
- 8-Katzian. Naser, general rules of contracts, second volume, 5th edition, Tehran, Publication Company, 2001.
- 9-Katozian. Naser, Preliminary period of civil rights, family, First edition, Tehran, Dagostar press, fall 2001.
- 10-Makarem Shirazi. Naser & Fazel Lankarani- Mohammad Javad, Source of authority's catechism, second volume, 2000
- 11- Qazvini. Sayed Ali, Legal effects of human artificial insemination, second sediton, Tehran, Research center of Ibn- Sina, 2004
- 12- Quran
- 13- Rezania Moalem. Mohammad Reza, legal situation of resulting child from embryo transfer, second edition, Tehran, Research center of Ibn-Sina, 2002
- 14- Safaee. Sayed Hossien & Imami. Asadollah, Summary of family rights, 5th edition, Tehran, Balance press, fall 2003.
- 15- Shahidi. Mahdi, Legal situation of laboratory child, legal articles collection, first edition, Tehran, Majd press, 2007.