

Legality of Parentage in benefiting Artificial Insemination in accord with Islamic Law in Iran

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Abstract: As human science progresses and new obtains appearance in empirical science realm, law and jurisprudent; complication subjects and matters are appeared and need their suitable solution ways. Artificial insemination is one of the newest matters, that human science progresses bring it to law and jurisprudent field artificial insemination or pregnancy without sexual intercourse can be discussed in two general types. The first type that it is called homogeneous, that the spouses own gametes are inseminated, it's permission is possible in any way provided that religiously prohibited preparations are avoided since parentage, one of the most important matters in Islamic jurisprudent, is known. The second type that it is called heterogeneous in which except the spouses own gamete there are donor and surrogacy interference and because it sometimes causes doubt and uncertainty concerning the child's parentage so there are different opinions about it. But, because the great leadership of Iran permits it and the constitution of Iran have been written according to Islamic laws, so artificial insemination is not a crime in Iran, and there is no law for supervision of this act. The resulting finding of the study reveals that the consanguine relation of children through these manners is entailed to the owners of sperm and ovum.

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1. Introduction

According to medical researches everybody, except Adam that had been created from mud, has been creating from combination of sperm and ovum. But some couples are infertile and they want to have their own child so many of them handle their problems by benefiting from modern infertile techniques such as Artificial Insemination. However, certain modern methods of fertilization sometimes causes doubt and uncertainty concerning the child's parentage. Since parentage is one of the most important matters in jurisprudent and legal laws this paper intends to deal with the genealogical relation of children through the artificial insemination.

2. Artificial Insemination

Artificial Insemination is an infertile treatment method that causes pregnancy without sexual intercourse (Nayebzadeh, 2001, 9).

In this method processed sperms have been transferring to different parts of woman's uterus and helps sperm and ovum contacts without sexual intercourse, so this method has a lot of similarities to normal pregnancy (Rezaniya Moallem, 2004, 52).

Artificial Insemination techniques are as follows:

- 1- Homogeneous Artificial Insemination
- 2-Heterogeneous Artificial Insemination

2-1- Homogeneous Artificial Insemination

In this technique the wife's ovum is inseminated by husband's sperm in any case sperm or ovum be infertile and it is done in two ways Intra Uterine Insemination and In Vitro Fertilization (Pourbakhsh, 2009).

2-2- Heterogeneous Artificial Insemination

* Donor Insemination:

In this technique the donor's sperm is inseminated by the infertile man's wife's ovum in both IUI and IVF ways (Jafari, 2003, 191). In this technique although the fresh sperms are useful but mostly the freeze sperms are used.

* **Oocyte Donation:** Sometimes the wife has healthy uterus but she doesn't have any ovum or she has ovum but because of some problems such as sever adhesiveness of pelvic it is useless (Rezaniya Moallem, 2004, 100). So, in this cases oocyt donation will be useful.

* **Surrogacy:** Sometimes wife has ovum but she doesn't have womb or her womb isn't able to bear the embryo and causes abortion, and sometimes childbirth is very dangerous, so the embryo has been transferring from ovum owner's womb to substitute womb and after the pregnancy period and birth, the sperm and ovum owner's due to the concluded contract will take the protection of the newly – born. (Rezaniya Moallem, 2004, 97).

* **Embryo Donation:** When there isn't any usual treatment for infertile spouses embryo donation has been suggesting to them (the same source).

In this technique the lawful spouses' sperm and ovum is inseminated in laboratory and after the first division in four days the embryo has been transferring to applicant womb (Nayebzadeh, 2001, 27).

3. Parentage:

Parentage means consanguinity or relationship between two persons (Lavis matoof, 1992, 103). It means race, origin, and family relative in Persian. (Anvari, 2002, 7803/8)

There are some written laws about it in Islamic jurisprudence for example the necessity of observance eddeh, period in which a divorced or widowed woman may not be married to another man detachment, (Sabegh, 1992, 1631/3)forbiddance of having more than one husband simultaneously (Karaki, 1999, 425/12) forbiddance of having sexual intercourse with married women. (Heli, 1996, 71/3)Although it is a relationship between two persons that caused by birth. (Ansari, 401)

Since everybody has been created from combination of sperm and ovum so this paper discusses the attributing of a child to the mother and father through the artificial insemination in accord with Islamic law in Iran separately and because the constitution of Iran have been written according to Islamic laws and specially holly Quran so we should refer to it:

3-1The parentage of a child and his/her father in benefiting artificial insemination:

According to the definition of parentage, customary, medical researches, and religion sperm owner is real father and the child is related to him. (Mehrpoor, 2001, 163)Also there are some verses in holy Quran that discuss it like verses bellow that jurisprudents and lawyers can refer to them.

Allah is the one who created man from water and has established for him relations of lineage and marriage and your creator and nurturer is powerful over all things. (Quran, Forqan, 54)

Allah is the one who gives the best perfection to all that He first created Adam from clay. [At the second stage] He decided the progeny of Adam be created from a small drop of a fluid of light value. (Quran, Sajdeh, 7-8)

Was not he but a drop of sperm poured forth ? (Quran, Qiyamat, 37)

Verily, we created man from a mingled sperm [of male and female's ovum]and in order to try him we granted him to faculties of hearing and sight. (Quran, Dahr, 2)

Allah created him of a sperm-drop and then gave him shape and perfection and his life was on ordainment. (Quran, Abasa, 19)

Which comes out of the backbone of the father and the ribs [of the mother]. (Quran, At-Tariq, 7)

So, we can say that anybody is created from the combination of sperm and ovum. As a result the owner of sperm is real father and the child is related to him. Therefore, in all types of artificial insemination it is proved and the child is attributing to sperm owner.

3-2The parentage of a child and his/her mother in benefiting artificial insemination:

Mother has genealogical, biological, and physiological roles in giving birth to a child because of her ovum conceiving and bearing. So, there are tree opinions in attributing a child to a woman in benefiting artificial insemination:

1. Some of the jurists consider bearing and the act of giving birth as a basis for attributing the baby to the mother and believe that the womb owner is the mother of the baby. This group refer to the below verses:

Those men who do Zehar, in the time ignorance a man could say to his wife:you are to me like the back of my mother and this was regarded as a divorce, with their wives should know that those women cannot be their mothers;none can be their mothers except those who bore to them. And indeed they utter an evil word and a lie. And verily, Allah is the absolving forgiver. (Quran, Mujadeleh, 2)

And we did enjoin on man to be kind and caring to his parents; his mother bore him with hardship;and the bearing of him and the weaning of him took her thirty months. (Quran, Ahgaf, 15)

Allah created you [mankind] in the wombs of your mothers, one creation following other creation [sperm, blood-clot and embryo] in triple darkness: [the membrane, the womb and the hollow in which the womb is enclosed]. This is Allah your creator and nurturer. (Quran, Az-zomor, 6)

And we did enjoin man to be dutiful and kind to his parents;since his mother bears him with extreme feebleness and she bears weaning him for two years. (Quran, Luqman, 14)

In this verses Allah says:the mother is the woman who conceives, tolerances the difficulties of pregnancy, and bears, so in contrary if a woman doesn't conceives, tolerances the difficulties of pregnancy, and bears as a result she isn't mother. (Mansoor, 1999, 106)

2. Some others say that two factors are effective in the existence of a child (ovum and bearing and giving the birth) so the owners of two these factors simultaneously are considered as a mother of a child. (Moosavi Ardebili, 1998, 538/Fazel langarani, 1998, 602-603)

3. According to the third group, the existence of a child from the ovum is considered as a basis of attribution to the owner of the ovum and she is

known as the mother. This group refer to the below verses:

Allah is the one who created man from water and has established for him relations of lineage and marriage and your creator and nurturer is powerful over all things. (Quran, Forqan, 54)

Verily, we created man from a mingled sperm [of male and female's ovum] and in order to try him we granted him to faculties of hearing and sight. (Quran, Dahr, 2)

Then we made the sperm into a clot, then we made the clot a lump of flesh, then we turned the lump into bones,

then we dressed the bones with flesh, then we made a complete creation; the source of blessings is Allah, the only creator. (Quran, Mumenoon, 14)

They believe that in customary being of father is equal of being mother, so as owner of sperm is real father the owner of ovum should be the real mother also it is convinced in medical researches. (Journal of Judicial branch, 2005, 96.)

If a woman cannot conceive, tolerances the difficulties of pregnancy, and bears or there be a danger for mother and embryo the pregnancy will be continued in a artificial womb and there isn't real conceive and bearing but the real mother is ovum owner and the child is related to her. (Reza, 2001, 326-327)

So, As a result the owner of ovum is real mother and the child is related to her. Therefore, in all types of artificial insemination it is proved and the child is attributing to ovum owner.

4. Conclusion:

1. As artificial insemination progresses is one of the recent matters. So, there isn't any jurisprudence and law background in Islam and Iran, especially in civil law for it.

2. Spouses own sperm and ovum insemination permission is possible in any way, provided that religiously prohibited preparations are avoided. Since parentage, one of the most important matters in jurisprudent, is known.

3. Although there are different opinions about the donor gamete interference, but because the great status of leadership in Iran believes in absolute permission so, it is permitted. In any case the child which is born in this way, is attributed to sperm and ovum owners and possess all the civil rights.

4. Also about Surrogacy, in medical researches it is proved that embryo has been created from the combination of sperm and ovum and the womb has different roles such as nourishing, growing, and protecting of the embryo but these roles aren't main

and initial in creation so the real and important role is for sperm and ovum.

5. As a result, according to holly Quran and Islamic laws in Iran, not only in natural pregnancy but also, in all types of artificial insemination the child is attributing to the sperm and ovum owner.

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