

Rights of donated embryo

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ABSTRACT

Today the assistance is done by utilizing the methods of fruitfulness in curing unfruitfulness centers in Iran in some cases in which the husband, wife, and or the couple have some unfruitfulness problems. One of these establishments is the establishment of embryo donation that is considered permissible and legal based on the rule and method of donating the embryo to unfruitful couples approved 1383 and its practical regulation. In this method the sperm and ovule of legal couples are inoculated in laboratory and the produced embryo is donated to other legal couples. The embryo donation has made a difficult situation especially in recognizing the child's "legal mother". The efforts for solving this problem have changed the social norms seriously and caused different points of view. Among the propounded points of view, the idea of the lack of the presence of this infant's mother due to the scientific problems, is unacceptable because the baby, who is the result of inoculating the sperm and ovule of the man and woman who have agreed with this action legally, cannot be without parentage. Other points of view each one has the advantage of the truth too but are not kept from criticism and alteration. With respect to the importance of this subject matter, this essay deals with the law of donative embryo.

Key words: donations, legal couples, rights, embryo transfer**Introduction**

Legal aspects and jurisprudential rules of embryo donation is one of the emerging jurisprudential issues facing the legal community. Embryo donation as a technique refers to the relationship between recipients and sperm or ovum donors.

Infertile couples use a donated ovum or embryo (legal parents) to conceive a surrogate mother and artificial insemination. (Hamdollahi and Pourseyed, 2009: 9)

Surrogacy agreement refers to different topics such as surrogate mother agreement, surrogate uterus agreement, contract pregnancy, uterine rental contract, etc., which surrogacy is the most appropriate topic. Embryo donation made some difficulties, especially in identifying the legal mother of the child; so that, Iranian legislature accepts this woman as the mother of a child born through embryo donation. (Safiri and Taherkhani, 2009: 160)

Assisted medical treatment is to transfer and implant an embryo formed with third-party sperm in vitro with has more difficult and more limited formalities.

In principle, the law prohibits in vitro fertilization and the embryo donation, when one of the donors is not a relative of the infertile family (recipient). Otherwise, law allows in vitro fertilization or embryo donation, when the donor is a relative of the recipient. In this way, the legislator tries find a solution on the one hand for families who want children but cannot have it naturally, and on the other hand to solve the problem of extra embryos.

Embryo donation made some difficulties, especially in identifying the legal mother of the child; so that, Iranian legislature accepts this woman as the mother of a child born through embryo donation. The French legislature in addition to assisted medical treatment, accept fertilization with stranger's sperm, but provided some rules in interests of the child.

Iranian law is incomplete on the effects of affinity on embryo transfer. Impeachments to marriage between the receiving couple and the child have not been presented and it is not clear whether the alimony is a unilateral obligation that only the receiving couple is obliged to do or donor should do it too. There is no mention in Iranian law about the anonymity of donors. According to French law, donors must be anonymous.

Iranian law is incomplete on the effects of affinity on embryo transfer. Impeachments to marriage between the receiving couple and the child have not been presented and it is not clear whether the alimony is a unilateral obligation that only the receiving couple is obliged to do or donor should do it too. There is no mention in Iranian law about the anonymity of donors. According to French law, donors must be anonymous. The terms of this contract cannot be determined solely on the basis of the general rules and regulations of the contracts.

The terms of the parties in the contract should be determined by the legislature, and we should not enforce the general eligibility rules in this case, because anyone who is eligible under the law is not eligible to enter into a surrogacy contract, whether recipient or donor. (Rahmani Manshadi, Hamid, 2009: 4) So far in Iranian law, there is no special law on pregnancy surrogate, but given the importance of the pregnancy surrogate, it is better to change this agreement to a legal entity with special regulations.

Therefore, in order to complete the laws of Iran and formulate a comprehensive law in this regard, the experiences of other countries can be used, of course, by observing the principles and beliefs of religion and national culture and the needs of Iranian society. This study aims to investigate the rights of donated embryo in Iranian law.

Research Method: Reasoning method was used in this study along with library method.

Discussion and Review**Embryo Donation**

With increasing development of genetic science and scientific achievements in the field of infertility, one of the important topics of these fertility methods is artificial insemination that has been interested by many applicants. The laboratory child is the same child as a result of artificial insemination.

The Iranian legislature, by approving the law on how to donate embryos to infertile couples on 2003-7-20 solved the problem of infertile couples and they can get their wish of having a child. In this way after preparing the male and female sex cells, they are placed next to each other in the laboratory to be fertilized. After fertilization, the embryo is formed and begin to develop.

During cell proliferation two days after the fertilization, i.e. when the embryo has four to eight cells, it is inserted into the fallopian tube to continue its normal growth inside the womb. This law allows an infertile couple to get their wish by accepting an embryo made up of another couple's sperm and ovum in the laboratory. According to the jurisprudence, culture and ethics of society, the law has limited the use of this method to infertile couples; legal relationship couples is necessary, if they have embryo. (Hamdollahi and Pourseyed, 2009: 205)

However, this comparative study shows that the law on how to donate embryos to infertile couples is an incomplete interpretation of the law on the protection of orphaned children and is inadequate in terms of the affinity of the child resulting from this method and its effects.

Effects of Embryo Transfer

According to Article 3 of the Law on Embryo Donation, the duties and responsibilities of the donor couple and the newborn child in terms of upbringing and alimony, maintenance and respect are the same as the duties and responsibilities of children and parents. This phrase is similar to Article 11 of the "Law for the Protection of Orphans Adopted in 1974". According to Article 11 of aforementioned law, the legislator noted the same duties and responsibilities for both in vitro fertilized child and adopted child. Also, in the law for the protection of orphans, the phrase "similar rights and duties of children and parents" is mentioned, while in the recent law, the phrase "such as the duties and responsibilities of children and parents" is mentioned.

Article 3 of the Law on Embryo Donation states that there is no relationship between embryo transfer and receiving couples and this rule is in line with the opinion of the Guardian Council.

Article 3 of the Islamic Consultative Assembly stated that "observance of the rights and duties governing the relationship between the child and the parents is obligatory on the couple receiving the embryo", but the Guardian Council did not accept it, arguing that "if the provisions of Article 3 mean "All the works that are for the real child are against the sharia, and if it is for another purpose, it will be determined to comment."

According to these explanation, Guardian Council does not recognize the right of inheritance between the child and the receiving couple. Because the jurists attach the child to the owners of sperm and eggs and inherit only between them. In Iranian law, there is no inheritance between the child and the receiving couple, but in the case of the impeachments to marriage between the child and the receiving spouse and their close relatives, there is no impeachments to marriage, while such a child is the child of the receiving parents. The best interests of the child require that this affinity or consensual relationship prevent marriage and cause deprivation. Some contemporary jurists have also said that a woman who has bear the embryo in her womb is either a mother or a legal mother, and if the child is a girl, husband is very near relatives.

Therefore, it was necessary for the legislator to specify the impeachments to marriage. In addition, one of the drawbacks of Article 11 of the Law on the Protection of orphan, which is also included in Article 3 of the new law, is that in the case of alimony, it is not specified that it is reciprocal. However, since these types of children are like affinity and the relative between them and the receiving couple is like the relationship between parents and children, then the obligation to give alimony can be considered a reciprocal duty, that is, as the parents are obligated. They are obliged to give alimony to such a child, and the child is obliged to give alimony to the parents according to the regulations regarding the alimony of relatives. (Safaei, Hossein, 2004: 68)

Child Affinity

An important issue in the embryo donation to infertile couples is the affinity, which due to the silence of the law, according to Article One Hundred and Sixty-seven of the Constitution of the Islamic Republic of Iran, its ruling should be obtained by examining authentic Islamic sources and fatwas. In this regard, identifying and determining the maternal affinity that is associated with the involvement of two females'

donor of womb and an ovum is challenging and requires further research (Safiri, Akram, Taherkhani, Fatemeh)

The "Law on how to donate embryos to infertile couples" approved in 2003 and its executive regulations regarding the identity and relationship of the child resulting from embryo donation are silent. The silence of the law has caused controversy among jurists, while it should also be noted that with the birth and growth of such children, the possibility of disputes and lawsuits between people involved in this process is inevitable. Therefore, the legislator must take action before such problems arise and in a position to address this major legal flaw that has been addressed in many of the world's legal systems.

Iranian civil law does not define affinity, but jurists define it: "It is relationship that arises from the conception through sexual relationship. From this, there is a natural blood relationship between the child and the two people, one of whom is the father and the other the mother" (Safaei, Hossein, 1995: 151)

Lack of Affinity between Donor and Child

The identity of the sperm or ovum donor is largely unknown. Article 19-301 of the French Civil Code, adopted in 1994, states: "In the case of reproduction with medical assistance and through the sperm donation by a third party without affinity between the donor and the resulting child cannot be proved."

This rule has a wide scope, and includes any affinity claim, and no one can address such a claim. This rule is in line with various regulations that emphasize the anonymity of the sperm donor.

Criticism of these rules states that it is contrary to the biological reality that is the basis of affinity. In response, it was stated that the prohibition on proving affinity with someone who donated sperm only with the altruism without wanting a child is justified. (Safaei, Hossein, 2004: 90)

Reciprocal Duties of Recipients and Child

One of the most important issues for in vitro fertilized children by embryo donation is their legal relationship with the recipients of the embryo, in other words, the rights and reciprocal duties of these children with the recipients of the embryo. Obviously, it will not be possible to study all their relations and duties, such as inheritance, province, etc. Therefore, in this discussion, we will only examine the duties and responsibilities prescribed in the law on how to donate embryos.

According to Article 3 of the Law on Embryo Donation, the duties and responsibilities of couples donating embryos and children born in terms of maintenance are the same as the duties and responsibilities of children and parents. The purpose of maintenance in this article is custody, which unfortunately the legislator has used instead of the slang and illegal term of custody. In Article 3, the mutual duty of recipient and child does not look right. Because the protection or maintenance is the rights and duties of the parents for child and the child does not have such a duty towards the parents. (Feiz Elahi, Nejat, 2009: 320)

Therefore, Article 3 should have been adjusted to specify the one-sided task of the recipient couple against the resulting child. Another objection to Article 3 is that the legislature in this article discusses custody only as a duty, while the protection of children, while also the duty of parents, is their right. Article 1168 of the Civil Code in this The context states: "Caring for children is both a right and a duty of parents"

The right to protection makes it impossible to deprive parents of this right except in legal cases. And the consequence of the duty of protection is that each parent can be obliged to perform this duty in accordance with Article 1172 of the Civil Code and their will to deprive and revoke such a right or duty is ineffective. (Feiz Elahi, Nejat, 2010: 320)

Thus, the Iranian legislator, despite recognizing that the recipients of the embryo accept him/ her as a child, has refused to use words that explicitly indicate the affinity, and the relationship between the child and the recipients in terms of some effects such as custody and alimony is considered as the duties and responsibilities of children and parents. (Safiri and Taherkhani, 2009: 128)

Raising A Child:

In addition to custody and maintaining the child, the recipients of the embryo are also obliged to raise the child. The task of the recipient couple is the same as the duties of the parents. Regarding the duty of the

child's real parents to bring him up, Article 1178 of the Civil Code stipulates that "parents are obliged to bring up their children as appropriate within their means and should not neglect them."

According to Article 1173 of the Civil Code Amendment, "The following are examples of negligence or moral degeneration of each parent:

- 1- Excessive addiction to alcohol, drugs and gambling
- 2- moral corruption and prostitution
- 3- mental illness at the diagnosis of forensic medicine
- 4- Abuse of the child or forcing him to enter into immoral jobs such as corruption, prostitution and begging

Whether the child resulting from the embryo donation is also obliged to obey the receiving couple or not? some jurists believe that the duty of obedience to the parents stated in the above article is limited to children who have a blood relationship with their parents. , And this obligation cannot be transmitted to children resulting from embryo donation because in the text of Article 3 of the Law on Embryo Donation, only the word "respect" is used and the legislator refuses to use the words indicating obedience, and the provision of Article 1177 of the Civil Code refers to the children with blood relative. In addition, the recipient are not the baby's parents, so obedience to them is not necessary for the baby resulting from embryo donation.

However, according to Article 3 of the Law on Embryo Donation, which necessitate paying alimony for both parents and the child, and considering the philosophy of Article 3 and that such children are also accepted for the child. On the other hand, without the obedience of such children, it will be difficult and perhaps impossible for parents to perform the duties of care and education, so it seems that the duty of respect, like children with a relative relationship, in children resulting from embryo donation is also a reciprocal task with recipients.

Also, according to the theory of motherhood of the receiving woman, and the theory of motherhood of this woman with the donor woman, there is a doubt in the motherhood of the wife receiving the embryo, and in this case, the receiving woman is the real mother of the child. All requirements from the maternal relationship, including obedience and respect, will also be established between this woman and the child born from the donated embryo. (Faizi Elahi, Nejat 2009, 254)

Embryo Inheritance

The laboratory embryo has two conditions: 1- existence 2- being born alive, and in the discussion of inheritance and testament, in addition to the mentioned conditions, if it is not an obstacle to inheritance, it enjoys all its rights. If artificial production is permissible and the child's affinity to couples who want to have children from is solved, there is a question on stranger's sperm, which is not solved in French law, but the new legislature is trying to solve it.

As the French legislature recommended artificial reproduction using the latest method, it also imposed restrictions on it. To the extent that civil and criminal penalties were considered for violators. While in Iranian law, there is no guarantee for violating the provisions of the law on donation and transfer of embryos. (Haji Azizi, Ghafghazi Asl, 2014: 134) Whenever sperm is transferred to the mother's womb after the death of the father, the question arises whether the child born by this method has a legitimate affinity and is the heir of his deceased father or not?

In recognizing the customary rule, the Shari'a has considered the evolution of man from sperm and egg, and in Article 875 of the Civil Code, he has accepted the late condition of inheritance, in such a way that he inherits from the death of his deceased father. Regarding inheritance, according to the jurists, the law of Iran does not accept inheritance between the child and the recipients of the fetus. While in France, the problem has been solved by legislation and deviation from traditional theory. (Safaei, Hossein, 2004: 91)

Embryo Financial Rights

In this section, the bearing status in the civil law is studied according to Article 957 of Civil law.

As stated in the previous section, embryo is eligible for all civil rights, provided it is born alive. In civil law a number of civil rights are explicitly recognized for embryo. (Shamsi, Ali, 2008: 59)

Financial rights are also among the civil rights. According to Article 957, embryo is entitled to get financial rights, this is conditional on the live birth of the embryo.

The embryo can take all forms of financial rights. The legislator has mentioned some of these examples in articles, such as Article 875 of the Civil Code on inheritance, Article 851 of the Civil Code on testament. Other examples of financial rights that the embryo can take are endowment, donation, right of exploitation, preemption, etc., which we will describe. (Mozaffari, Mehdi, 2013: 61)

Inheritance

Articles 861 to 940 deal with the issue of inheritance in Iranian civil law.

Inheritance literally means the non-contractual transfer of something from one person to another, and it also means the remainder of something.

It means the transfer of ownership of the devisor, in legal terms, after death to his heirs. (Emami, Seyed Hassan, 1993, p. 169)

According to paragraph 4 of Article 140 of the Civil Code, inheritance is one of the means of acquisition, where property and assets of the devisor are forcibly transferred to the heirs at the time of his death. In addition to Article 861 of Civil Code, the causes of inheritance in the two matters of affinity and the relative mentioned in Article 862 of Civil Code The persons who inherit according to affinity are counted who are in the first class of heirs of the children of the devisor.

Inheritance is one of the rights that is directly derived from affinity and is also emphasized in civil law. There is no doubt that the embryo inherits as one of devisor's children; the important issue is that embryo inheritance has conditions which can their share of the inheritance. On the other hand, the amount of his share of inheritance, and the quality of its determination is mentioned in Article 878 of the Civil Code. (Shamsi, Ali, 1999: 70)

In other words, two things cause inheritance: affinity and relative. Therefore, inheritance is a relationship between two people that one of them forcibly inherits from the death of one. This relationship is relative, and according to Article 861 of the Civil Code, relative has two types: affinity and causal.

Relative alone is not enough to inherit from one another, but it must also exist to have conditions such as: the death of the devisor, the existence of the heir, the existence of a heirloom for the deceased.

Of these three conditions, the second condition (the existence of the heir) is examined, and the condition of inheritance is that the heir is alive at the time of the devisor death. Because inheritance is the forced transfer of property from the devisor to the heir. In order to determine whether the heir can inherit or not, the heir must be known (Mozaffari, Mehdi, 2013: 62)

Barriers to inheritance under Iranian civil law are: cursing, murder, Illegitimate child, infidelity

Since in our discussion is embryo as heir, the embryo can be illegitimate child¹. illegitimate child does not inherit from parents and relatives. According to civil law, affinity is one of the causes of inheritance, but it means the same legitimate affinity, inheritance is a right that is not only excluded, but the decree explicitly confirms it under special condition. The book of Sharia states:

" Embryo inherits as long as it is born alive. (Mozaffari, Mehdi, 2013: 62)

Inheritance conditions of Embryo

According to Iranian civil law and jurists, the following two conditions are necessary for the embryo to be an heir and to be treated as a born and independent human being when dividing the heirlooms:

- 1- Conception during the death of the devisor
- 2- Live birth of a embryo (Mozaffari, Mehdi, 2013: 63)

1- Conception during the death of the devisor: following conception, the first stage of his life begins. This stage is called the embryonic period or the period of pregnancy. (Shamsi, Ali, 1999: 71)

The legislator knows how to identify and the existence of embryo in the matter of inheritance, following the conception at the time of the devisor death. The reason why the conception must be at the time of the devisor death is that, according to Article 867 of civil law, the inheritance is realized through the real or

¹ Article 844 of Civil code: " Illegitimate child does not inherit from parents and their relatives. "But, if one of the parents is legitimate and other one is not, the child inherits only from this side and his relatives, and vice versa."

hypothetical death of the devisor, and heirloom will is transferred to the heir at the time of death of devisor. (Emami, Seyed Hassan, 2002: 187)

Article 875 of the Civil Code states the same thing. According to this article, if the heir is one of the embryonic stages during the death of the devisor, the embryo inherits from devisor's heirloom, and it is not necessary that the soul was found in the embryo at that time. (Mozaffari, Mehdi, 2013: 64)

There are two issues regarding conception:

- 1- Manner of conception
- 2- Time of conception

Conclusion

The law of embryo donation to infertile couples has solved the problem of infertile families to some extent using jurists decree and legal ideas. This law allows an infertile couple to get their wishes of having a child by accepting an embryo made from the sperm and ovum of another couple in the laboratory.

Some measures have been taken in accordance with the law to protect the child resulting from this method, as the law stipulates that the duties and responsibilities of the donor couple and the child born in terms of maintenance and upbringing and alimony and respect are the same as the duties and responsibilities of children and parents. According to the jurisprudence, culture and ethics of the society, this technique can be chosen just by infertile couples as well as for a man and a woman who have an embryo, the existence of a legal marriage relationship between them is necessary. Iranian law, despite its innovations and positive aspects, has shortcomings and inadequacies.

In Iranian law, there are only provisions for donating embryos to infertile couples, while other assisted fertilization treatments have not been concerned and the law is silent about them, such as the formation of embryos in the laboratory with ovum and sperm of a couple whose cannot have children naturally.

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