

Surrogacy and its legal aspects

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ABSTRACT

One of the modern methods in curing unfruitfulness that today has been paid attention to more than other helpful methods of bearing legally and medically, is utilizing the substituted womb that has made having baby possible for women who do not have suitable womb based on any reason for fruitfulness and the pregnancy of the embryo through laying the inoculated embryo from the couple's sperm and ovule in other woman's womb (rented womb). The subject of using the substituted womb and the parentage of the child born from the substituted womb, is among actions that its impositional and positional verdict should be recognized. In this study, whatever is surveyed, is not monitor for impositional verdicts but is the survey of the positional verdict of the child born from the substituted womb about the inheritance and alimony. Among the important subjects matter that is propounded about this subject in the area of legal subjects, is the status of the inheritance of the frozen embryo, also in the field of alimony, some subjects are posed among those that are important and in the discussion of the alimony of the baby born from the substituted womb, are capable of being propounded, is this: whether the pregnancy, that is in the successor mother's womb, is deserving of alimony or not? Our effort in this research paper is to deliver proper responses for above questions according to the legal bases and taking advantage of legal thoughts. Related to the importance of of this subject,

Key words: rights, external fertilization, judgment parents, child assignment, fetal inheritance

Introduction

The legal aspects and jurisprudential rules of assisted infertility treatments are among the emerging issues facing the legal community. Third-party artificial reproduction refers to involving someone in the process of reproduction using sperm, ovum, or donated embryos and the use of a surrogate mother, and this raised new legal issues (Nayebzadeh, Abbas, 2001: 2).

In external fertilization, when a woman carries another couple's embryo, the term "surrogacy" emerges. There are different definitions of surrogacy; some have defined it as:

It is an agreement by which a woman (surrogate mother) agrees to carry another couple's embryo just until birth. (Hamdollahi and Pourseyed, 2009: 190)

Despite these definitions, appropriate definitions have been presented for surrogacy;

Come up with a more appropriate definition for the use of a surrogate uterus;

The surrogacy agreement is a bilateral agreement, where a woman (surrogate mother) agrees to conceive by assisted reproductive treatment like using the ovum and sperm of another couple that was fertilized in vitro; while "intended carrier has no genetic relationship with the embryo, but bears the fertilized ovum or embryo until the birth and then deliver the child to applicant couple (legal parents)." (Alizadeh, Mohammad, 2006: 180)

Opting for surrogacy is often a choice made when women are congenitally infertile or have lost their uterus for any reason. Also, this is a choice for women who have become unable to conceive due to tuberculosis, diabetes, severe heart disease, or thalassemia. In this method, the infertile couple is legal parents, and the woman who rents her womb is called a surrogate mother. (Rahmani Manshadi, Hamid, 2008: 3)

A "surrogate mother" has been entered from foreign law into Iranian law and refers to a person who bears an embryo until the birth and then deliver the child to the legal parents based on an arrangement (Feiz-e-Elahi, Nejat, 2010: 82)

The rules of attribution of the child born from a surrogate uterus and choice of surrogacy should be clarified. Not only injunctive ruling but also the inheritance and alimony of the child born from the surrogate uterus; i.e. declaratory ruling is also reviewed. Frozen embryo inheritance is another significant issue that can be examined. There are several issues related to alimony. (Hamdollahi and Pourseyed, 2009: 197) This phenomenon, like any other new phenomenon that occurs in society, has been concerned by different people. Jurisprudence and law have also reacted to this phenomenon and looked at it from a specific perspective. (Rahmani Manshadi, Hamid 2009: 3)

The declaratory ruling of a baby born from a surrogate uterus should be considered in two manners:

- Rules about the natural relationship between the child and the parents, such as inheritance and affinity
- Rules about receiving material and spiritual rights of the child, such as guardianship, custody, and alimony, etc.

This study aims to investigate the inheritance of a frozen embryo. Then, declaratory ruling a baby born from a surrogate uterus is examined. We also talk about the alimony of the fertilized embryo implanted in the surrogate uterus. (Hamdollahi and Pourseyed, 2009: 4)

Research Methods

The reasoning method was used in this study along with the library method.

Discussion and Review

Inheritance

The term inheritance is used to mean survival, and heir means remaining. Inheritance in the term means the natural transfer of property and assets of the devisor to his heirs. And property means the financial rights that he had at the time of death, considering that the debt is not transferred to the heir and belongs to the heirloom. The heirloom transfer will take place without the will of the decedent and the heir, why it is called natural transfer. It should be noted that there is a difference between heirloom and inheritance because the

word inheritance means entitlement, but inheritance belongs to this entitlement. (Hamdollahi and Pourseyyed, 2009: 5)

Discussing inheritance is necessary for the field of the inheritance of a child born from a surrogate uterus. Therefore, first, we will express a theory that can be the basis of discussion in child inheritance:

1. The first theory is that the Civil Code in Article 861 has considered affinity as a condition of inheritance. As a result, the illegitimate child has been excluded in Article 884 from this matter. Affinity is a condition of inheritance and an illegitimate child is deprived of inheritance according to Article 884 of the Civil Code.

As a result, a legitimate child inherits if the affinity is achieved, because Article 884 of the Civil Code is an exception to Article 861 of this law, and execution of exception criterion is contrary to spiritual law. Thus, all children are inherited, and there is no reason why the condition of inheritance in affinity is a valid marriage. (Emami, Seyed Hassan, 1991: 216)

Therefore, to establish an inheritance relationship between a child born by a surrogate mother and his / her legal parents, the affinity must be realized. Affinity is not enough to get an inheritance and other conditions are considered. (Hamdollahi and Pourseyyed, 2009: 6)

Inheritance Status of Frozen Embryo

The semen inside the womb takes civil rights from the moment the sperm coagulates. The question now is whether these rights apply to fertilized embryo children after the conception until transferring to the womb or not?

Article 975 of Civil law states: "Embryo takes civil rights, provided it is born alive." Article 270 of Civil law also states: "Confession for the embryo is effective if it is born alive."

To answer this question, a distinction must be made between the two. (Safaei and Alavi Qazvini, 2006: 55)

1. Semen continues to grow without interruption, whether in the womb or in vitro takes all civil rights, and upon its birth, it becomes clear that from the beginning of the formation of the embryo, all civil rights are created in his favor, and with his live birth, the rights created in his favor are established from the time of conception.

2. A frozen embryo while its developmental stages are stopped and may remain frozen for many years is not called embryo then and the legal rules are not applied.

According to the two aforementioned cases, the main purpose of the legislator is to recognize these rights for the semen as a human being, whether in the womb or in vitro. The differences between a growing embryo and a frozen embryo who stopped growing and deprived the rules are not reasonable, because the embryo who stopped growing is semen that is considered as a potential human being (Hamdollahi and Pourseyyed, 2009: 8).

Different Forms for Choice of Surrogacy

The choice of surrogacy is divided into two groups depending on the genetic relationship of legal parents and surrogate mother (Nayebzadeh, Abbas, 2001: 79).

Surrogate in Pregnancy

When the surrogate mother conceives by assisted reproduction treatment such as a fertilized embryo derived from the sperm and ovum of the ruling parents, in this case, the surrogate mother has no genetic connection with the child and she only agrees to bears an embryo which consists of the sperm and eggs of the parents in her womb (Hamdollahi and Poursaid, 2009: 8).

Surrogate Using Donated Embryo or Ovum:

This method is based on the relationship between applicant parents, spouses, or third parties who own sperm and egg. Infertile couples use donated ovum or embryos (legal parents) to conceive a surrogate mother and perform artificial insemination. (Hamdollahi and Pourseyyed, 2009: 9)

The surrogacy agreement is used under various headings such as surrogate mother, surrogate uterus, contract pregnancy, uterine rental, etc. According to the author, the title of the surrogacy contract is better. So far, there is no special law in Iranian law regarding pregnancy surrogate, but considering the importance of pregnancy surrogate, the legislator should turn this contract into a legal entity with special regulations.

The terms of this agreement cannot be determined solely based on the general rules and regulations of the contracts. The terms of the parties to the agreement should be determined by the legislature, and we should not enforce the general rules on eligibility in this case, because anyone eligible under the law is not eligible to enter into a surrogate contract, whether he or she wants a child or a pregnancy applicant. (Rahmani Menshadi, Hamid, 2008: 4)

Alimony for a baby born from an alternative uterus:

Alimony for Children Born of Surrogacy

As Article 1196 of Civil law states that direct relatives are only required to give alms to each other. One of the effects of legal affinity is the obligation to give alms to direct relatives. In general, direct relatives are divided into two categories:

- Those who are born of a person (descending relatives)
- People from whom a person is born (ascending relatives)

Alimony in legal terms is defined as something that is needed to make a living. The Civil Code mentions these cases in Article 1204. According to Article 1199 of the Civil Code, the alimony of the children is the responsibility of the father, and in the absence of the father or financial disability, the alimony of the child is with the mother. If the mother is not alive or financial disability over her alimony, alimony is the responsibility of the maternal ancestors and paternal ancestors.

Considering that in the case of paternal affinity, the natural father is the legal father of the child. Therefore, there will be no problem with child support from the parents and paternal grandparents. Therefore, in the absence of the first and second classes or their inability to pay alimony, the mother in the third class is obliged to give alimony to the child. It seems that the alimony mentioned in Article 1109 of Civil law is for the embryo and there is no effective relationship between the divorced woman and husband and the obligation of almsgiving, because, with the final dissolution of the marriage, there is no reason for the alimony of the wife, while between the blood relative between embryo and father, alimony has become obligatory.

More precisely, according to Article 1199 of the Civil Code, the father is obliged to pay alimony to his children and there is no difference between the child and the embryo. As a result, during surrogacy, the surrogate mother who bears the embryo should get alimony. (Hamdollahi and Pourseyyed, 2009: 12)

It is important to note that surrogacy agreements are inherent in the contract, and cannot be terminated except by mutual consent. In this contract, after the placement of the fetus in the surrogate mother's womb, sovereignty is governed by the rules, and ejaculation is consequently eliminated, but ejaculation is possible after the conclusion of the contract and before implanting the embryo in the surrogate mother's womb. Surrogacy is a suspended agreement, and the effect of the contract occurs after pregnancy. (Rahmani Menshadi, Hamid, 2009: 5)

Implanted Embryo in The Surrogate Uterus

There is an important question, whether the implanted embryo in the surrogate mother's womb entitled to alimony or not? To answer this question, we must examine the arguments cited and the provisions of the Civil Code regarding "alimony for a pregnant woman after the dissolution of marriage." (Hamdollahi and Pourseyyed, 2009: 214)

Obligation to pay alimony to a pregnant woman in voidable divorce or irrevocable divorce is one of the reasons why people are obliged to pay alimony to each other is an affinity. As a result of affinity, the husband is obliged to pay alimony to his wife, but if affinity disappears, this obligation will also be waived. Of course, in voidable divorce, as long as the divorced wife is present, she will be considered as the wife and will be entitled to alimony. (Civil Code of 1109)

In this case, it has been argued that in revocable divorce the marital relationship is not terminated in general, and revocable divorce does not lead to the final dissolution of the marriage, but in Iddah, the effects of the marriage remain to some extent and the duration of the Iddah is actually marriage extension and the rulings of the same period are imposed on it. In the case of husband referring, the past marriage relationship will be continued through all the effects and it is not needed to get marriage again. (Hamdollahi and Pourseyyed, 2009: 215)

However, as a result of irrevocable divorce, because the marital relationship is terminated in general, this obligation will not exist either. According to the Civil law of 1109, if a woman is pregnant, she is entitled to alimony until she gives birth.

Conclusion

Unfortunately, many couples face many problems due to their inability to conceive and this causes breaking down life and divorce. Reproduction treatments help to solve the problems of infertile couples and reduce the divorce rate in society. The choice of surrogacy helps women who do not have problems ovulating and have other reasons for infertility.

Hence a high percentage of infertility problems are solved. Several studies have been performed on the surrogate uterus psychologically and psychiatrically for about 15 years, and possible injuries have been studied in four different studies, but so far no specific injuries have been found. Another advantage of this treatment is that surrogacy is both legally approved by the jurists and legally approved.

In Iranian law and following the jurists, there is no inheritance between someone who receives the embryo and the child. According to the traditional theory, the child belongs to the owner of the sperm and ovum and inherits only from it (Safaei, Hossein, 2004: 91).

In Iranian law, there are only regulations for donating embryos to infertile couples, while there are other assumptions for medically assisted reproduction, which the law is silent about, such as donating sperm or ovum, fertilized embryos in vitro. The couple who cannot conceive naturally and transfer it to the womb of the same woman. There are some regulations in France about receiving a laboratory embryo by a single or widowed woman to bear in her womb, coagulation of the embryo with the husband's sperm after her death, and transfer of the embryo to the wife's uterus, Iranian law does not provide an executive guarantee for violating the legal provisions on embryo donation and transfer.

In Iranian law, to achieve the desired of the ruling parents or the applicant, the rights and responsibilities of the parents can be established for the ruling parents or the applicant concerning the child born from a surrogate womb in the case of surrogacy using a donated egg or embryo. The Iranian legislature has taken steps in this direction by approving the law on how to donate embryos to infertile couples on 2003-7-20

According to Article 3 of the aforementioned law:

"The duties and responsibilities of the donor of the embryo and the child born in terms of maintenance and upbringing and alimony and respect are the same as the duties and responsibilities of the children and the father." Thus, without specifying the attachment of the child to the adoptive couple, the legislator has mentioned only some of the effects of affinity and has silenced the issue of inheritance, while embryo receivers are obliged to do all affairs including inheritance. The silence of the law seems to mean that the rule of inheritance does not apply in this case, because legally the conditions of inheritance, in this case, do not exist at all. Therefore, there is no ambiguity in the law. In other words, the sentence of inheritance is not established according to this law and the reason for not specifying the conflict of this sentence with the general reasons of inheritance in the civil law.

It seems that the alimony mentioned in Article 1109 Civil law is for the embryo; the effective relationship between a divorced woman and a husband made no obligation for alimony; Because with the final dissolution of the marriage and the destruction of the marital relationship, there is no reason for the alimony of the woman, and this is in the case that between the embryo and father, due to the existence of an affinity, alimony has become obligatory. In other words, according to Article 1199 of Civil law, the father is obliged to pay alimony to his child, and there is no difference between the child and the embryo. In the case of surrogacy, the surrogate mother will be entitled to alimony from the parents due to bearing implanted embryo.

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