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STUDYING THE STATUS OF EMBRYO TRANSFER FROM THE VIEW OF LEGAL JURISPRUDENCE

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ABSTRACT

Embryo transfer occurs when none of the partners own healthy gametes to reproduce, or the fertilization is not possible due to the existing defects, but the female is able to complete a successful pregnancy period and deliver the baby. Surrogacy, the agreement according to which the owner of uterus (the replacing mother) has not any relativity with the child and grows another couple's embryo in her uterus and delivers it, attracted many of infertile couples in Iran. In this article, the various methods of IVF (in-vitro fertilization) from the view of jurisprudence experts, Islam's view on embryo and gamete donation is examined and several points are discussed

Keywords: Embryo transfer, gamete donation, the relevant decrees in jurisprudence

INTRODUCTION

Medical advances and identifying the treatment for infertility, from inducing ovulation to gamete donation, embryo donation and surrogacy has provided the possibility for curing most types of infertility. Iranian legislators took a big step on this way by passing the laws on the method of embryo donation to the couples in 2003 and its executive regulation on 2004. Although there are several discussions on this law, but it is considered to be efficient as a starting point

for legalizing the process. These methods are known as a significant progress, but could not convince the scientists of other branches of science and raised many question in the fields of ethics, sociology, psychology, law and jurisprudence. However, utilizing these methods requires replying these questions and providing the social-cultural background in the society. Generally, reproduction and the issues surrounding it involve some kinds of legal, religious and social restrictions in

Islamic culture, and in case of interference of a third-party factor with the process, the role of religion as the determining factor in legal discussions of reproduction will be considered all the more. Therefore, preparing the regulations and systematizing the subjects of this field seems necessary in parallel with its medical advances to avoid any discrepancy between medical methods and religious and legal principles in utilizing these methods. The subject of using auxiliary methods for in-vitro fertilization (IVF) has brought up several discussion and questions in jurisprudence, law, medicine, ethic and sociology domains.

People have different reasons for using IVF. Considering that artificial fertilization is a relatively new phenomenon in human communities and has not been extensively discussed and examined in constitutions of most countries, including Iran, so the efforts must be doubled to study more on its various aspects in terms of jurisprudence, law, ethics and sociology. Also, the laws on matters such as genealogy, custody, ownership, inheritance, and alimony of such cases should be determined and defined to observe their legal rights and prevent from emerging orphans and faceless children in the community.

Medicine science has managed to offer some solution for such issues in recent years. But several secondary problems emerged afterwards which were not soluble by the physicians. So, it seemed necessary to extract the viewpoints of jurisprudence experts and theology professors. Various aspects of this subject can only be clarified through several research works on new methods of infertility treatment. This article aims at briefly explain the results of jurisprudence and legal investigation on embryo donation.

Natural conception

Sex cells include ovum and sperm which are known as “gametes” prior to conception. By providing the possibility of fertilization and penetration of a sperm into an ovum, “zygote” is produced.

Other body cells have 46 chromosomes apiece, excluding the gametes. These chromosomes connect to each other and form 23 chromosome pairs. Chromosomes have several thousand genes which each of them are responsible for transferring congenital attributes of father or mother. If sperm and ovum had 46 chromosomes each, an egg would produce with chromosome number double the parents’ chromosome number after ovum conception. But God’s will determine that the chromosome number of sperm and ovum reduce to half of the number

of other body chromosomes. Chromosome division or meiosis occurs exactly prior to the maturity of gametes. After this division process and the exchange between sperm and ovum genes, a new and fertile cell with 46 chromosomes is produced (Akhoundi and Sadeghi, 2003).

This simplified overview of cell actually explains a very precise and complicated process in which the data of more than hundreds of thousand biochemical reaction exist. These data are the plan and instruction of new practical action, and the real growth of fetus will begin afterwards.

Conception is a complicated process and should take place during a certain period of time. Theoretically, a sperm is always ready for fertilizing the ovum, but an ovum is capable of being fertilized only after the ovulation circle and during 12 to 24 hours after releasing the ovum. So, sexual intercourse from 24 hours before to 48 hours after ovulation leads to fertilization. If sperm and ovum simultaneously start to move towards the female genitals, it will result in fertilization and formation of an embryo which will place in the wall of the uterus (Akhundi, Ardakani and Arefi, 2006).

As it was previously mentioned, natural conception occurs when a female releases one or more healthy and mature ova and

these ova joins male's healthy and mature sperm. For fertilization to happen, sperm and ovum should move constantly from female genital tubes and become fertilized under the effect of hormones and body excretions.

The task of female reproductive system is providing a proper environment for facilitating sperm movement in the internal mucous to reach the fallopian tubes and join the ovum (reproductive system textbook, 2005).

So far, the pregnancy has not taken place in a couple which has lacked one of two preconditions (secure transferring of gamete to the conception place, and hormone environment for fertilizing and maintaining the cell). Currently, in vitro fertilization has succeeded in solving the anatomic or physiologic problems of most couples who suffered from infertility (Akhoundi and Sadeghi, 2003).

Considering the previous discussions, fertilization, and resultant natural pregnancy is possible if five following conditions are met:

1. One or more healthy ova are released in proper situation and in relation with proper hormonal environment.
2. Healthy, strong, active and mature sperms exist around the uterus at the time of ovulation.

3. Physical and chemical environment should be provided for sperm movement in female reproductive system.

4. Healthy and open fallopian tubes should facilitate the movement of sperm and ovum.

5. An intact and healthy uterus (without Fibroid tumors and with an endometrium layer with sufficient thickness) should exist in order to form and maintain the embryo (Akhoundi, Ardakani and Arefi, 2006).

Infertility

Infertility is defined as incapability of being pregnant after one year of regular and constant sexual intercourse, without protecting methods. It is sometimes known as the inability to complete the pregnancy course and failure to deliver a live baby.

Infertility is a worrying and widespread issue for couples and almost 15% of the couples suffer from this disorder. According to the available reports, its prevalence is going to increase in human communities.

According to the information of National Center for Health Statistics (NCHS), the infertility prevalence is increasing. The prevalence of infertile couples has increased from 14.4% from 1965 to 18.5% in 1995 (Sadeghi Moghadam, 2006). Increase of average age of marriage, exposure to environmental toxic materials and sexually transmitted diseases (STDs) are the effective

factors in increasing the infertility prevalence.

The causes of infertility are categorized into two factors: men's factors and women's factors. We discuss them in two chapters.

The status of surrogacy in enacted laws of Iran

Surrogacy, or the agreement for using someone else's uterus to keep the embryo, is applicable if the infertility is caused neither by sperm nor ovum, and the woman's ova have a normal function. Moreover, in case of such defects in uterus texture or the possibility of concerning or serious medical hazards during the pregnancy, woman's health may be jeopardized and the placement of embryo in uterus does not happen. In all cases above, surrogacy is an alternative solution for bearing the child. The term "IVF" is applied when a woman becomes pregnant to deliver another couple's embryo (Akhoundi, Ardakani and Arefi, 2006).

Studying embryo donation from the view of law and jurisprudence

Revocability and prohibition

By searching in verses and narratives, we may not see any explicit opinion about the revocability or prohibition of embryo donation, because this was not an issue in the primary years of Islamic government. So, we have to search in the verses and narratives in

order to infer the revocability or prohibition which requires an independent discussion. Here, we just take a look at the opinions of Islamic experts and theologians to realize the revocability or prohibition of this subject.

Jahad Daneshgahi research institute of reproduction and infertility biology and biotechnology (Ibn-e-Sina research institute) sought the legal and Islamic advice of religious authorities about embryo donation, prior to holding a seminar with the name of “jurisprudence-related and legal issues of embryo donation” in 1998. After studying the problem thoroughly, high-rank religious authorities explicitly proclaimed their opinion on the subject. Some of these authorities announced the prohibition of embryo donation, but the majority voted for its revocability. Among the adversaries, there were late Ayatollah Mirza Javad Tabrizi, which completely opposed the embryo donation to another woman- except a man’s wife (the new methods of human reproduction from the view of jurisprudence and law, 2003). Late Ayatollah Fazel Lankarani did not permit the penetration of a man’s sperm in a stranger woman’s uterus and announced the conceived child illegitimate (same source, page 397).

But other Islamic scholars such as Ayatollah Bahjat and Ayatollah Sistani have expressed

a more moderate opinion. Ayatollah Bahjat declares that if it is obvious, it is the area of objection (same source, page 394). It can be inferred inversely that in case of being unobvious, no objection can be imposed on the action.

Ayatollah Sistani states that if this process does not require touching or looking at the kin person, it is preferred to be prohibited (same source). In fact, there is no consensus neither on its absolute prohibition nor on its exact revocability.

The rest of Islamic scholars agree with the embryo donation depending on a few conditions. Ayatollah Mousavi Ardebili declares that it is of no objection, if the other woman permits or her husband (in case of being married) permits or requests it (same source, page 395). Actually, while allowing this action, he has pointed out the importance of “consent” in the decision. Ayatollah Sane’i has allowed to insert the produced zygote into another woman’s uterus per se (same source, page 396).

Considering the aforementioned opinions which demonstrated a consensus among the jurists on the revocability of embryo donation, and following the seminar for jurisprudence-related and legal issues of embryo donation in 1998 by Ibn-e-Sina research institute and their persistent effort

on the matter, Iranian legislator decided to pass a law on infertility, and the law on the methods of embryo donation to infertile couples was enacted on 2003.07.23.

In the mentioned law and according to the opinions of Islamic scholars and jurists in article of 1 of the law, the

revocability of embryo donation was confirmed and all specialized infertility centers were allowed to donate the embryos to the couples whose infertility has been proved (one of them or both of them) after receiving the written consent of the couple.

Consent