

## Contemplation on Juridical Verdicts and Effects of Artificial Fecundation

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**Abstract:** Medicine provided reproduction in infertile couples who are not able to birth children as naturally. Today, it is possible to form foetus in laboratory, transmission foetus into third part womb and gift foetus by helping medicine. Although, the west is main place for reproduction but the techniques were not limited but medicine knowledge passed our frontiers and is performing in different points of countries. Simultaneously with development and variation in new techniques, different ethical and legal and philosophical dimensions and religious and social believes are conversely and vast researches performed around it. Lacking compiled regulations and laws in Islamic countries including Iran needs to perform researches to help us. Thus, this article discussed one of the main steps of the subject and what is cited on it, is to discuss practical verdicts of types of artificial fecundation methods and discuss situational effects of types of artificial fecundation. We try to compile and determine views of jurists about offering solutions in said insight by recourse into narrations. And also, use of normal bases in children rights cannot be effective in discussion heritage, custody, supervision, alimony and marriage of children by foetus of third party. In this study, it is tried to offer logical and reasonable method in order to reach in children' rights.

**Key words:** Juridical verdicts, artificial fecundation, right, children, normal

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### INTRODUCTION

Sexual inclination of man and woman and native kindness of father and mother caused the family is regarded as oldest and most important natural unit from early. The most important durable factor of family is woman and man love to each other and children, so that the families who lack children can be returned by medicine development and takes them kindness. Since Iranian doctors have many abilities for artificial fecundation like presenting gamete and transfer foetus, thus these actions have many applicants and there are many ambiguities in legal and juridical verdicts in order to prevent from new medicine developments. Use of said methods can provide the problems in society as well solve problems due to not having children. One of the aims of study is to offer legal solution and use of third party and clarify situation of born child and prevent from convers solutions with infertile couples in order to treat infertilities because of legal gap. And also, it tries to respond Islamic jurists and another aim is to offer suitable respond about questions for infertile couples, judges and attorneys, law students, doctors and infertile centres and Civil Registration Organizations. The method is reasonable and inference by logical analysis and the main method for collecting data is librarian method by observing and internet networks.

**Advanced methods for treat infertile:** Generally, fecundation out of womb is applied in terms of natural methods. The main difference between natural and artificial method is to delete some of building and physiologic parts. As sum different faces of fecundation are classified: Application new techniques like gifting sperm by another person who provides possibility of infertile couples. In other countries, it is possible to replace it with approving laws and regulations and it will be performed. Some of women lack womb or because of acute diabetes cannot be pregnant. For these couples, it is necessary to use other womb. Some of infertile women are not able to take ovule but they have health womb and by presenting ovule can provide pregnancy. This case can be suitable method for old women who are not able to have ovule.

Presenting fetus: in some of occasions, number of ovules which are collected from infertile woman is more than numbers which are required for treatment, in this regard, extra ovules are fertile and used for next periods. In some cases, the couples prevent from reuse fetus after pregnancy and informed that they can present their fetus to others who have not sperm (Akhondi and Sadeghi 2003).

**Establishment principle:** In civil law of Iran, artificial fecundation is not predicated because of legal situation of

child and since law obliged the judge to provide his vote in terms of article 167 of constitutional law thus it is necessary to provide best solution. Before it we can state about main principle to take insight in the time of doubt. Maybe, in this case we can recite different views and insight about negligence and other cases so that it is recited that matrimony, marriage, divorce and birth due to different factors can be observed well. And thus if the verdicts will be stated in terms of another cause thus we will accept the caution. But it is said that caution is convers caution and God says in Koran (Yunis: 59)

In other side, verdict on not be permission or prevent from what is permissible and lawful can be caution symbols and based on it, what they said that permission principle when is true that to be permission of not allowance is proved sperm fecundation of man to woman is possible by two methods:

- Sperm fecundation (spouse or non-spouse) by woman ovule in womb
- Man sperm fecundation (wife or non-wife) out of womb and transfer fetus into womb

**Sperm fecundation of man into womb of his wife:** The jurists like Ayatollah Golpayegani by narrated from Emami, comparative study on Iran and French Law, cited in virtue of word in verse Baghareh 223 and permitted fecundation of man into woman and since there is no reason for adultery or locating fetus into womb thus, it is not true for it, About introductions like tools for fecundation and seeing vagina, firstly medicine tools are premised for medicine tools are premised secondly, to be sexuality of doctor with patient solves the problem since man and woman are legal each other and the verdicts postulated on them are true. And these regulations true for all (Yazzi, 1999).

#### **SPERM FECUNDATION OF NON-HUSBAND INTO WOMAN**

In Iran, there is not difference about lacking allowance of sperm fecundation of non-husband and against some of researchers like Seyed Mohammad Bejnourdi offers different insight. He wrote that this case is not regarded as adultery and is not from prohibited cases in law thus, in terms of legal principle it is premised (by narrated from Aliabadi and Ayatollah Khamenei said in responding to juridical insight under no. 8125 of Head of Women speciality Hospital of Mirza Kocheh Khan: fecundation of foreigner sperm is not prohibited by legal point of view but we shall avoid from prohibitions. Yazdi (2003) believed in permission of the action and did not regard its prohibition.

Proponents of incoualtion believed in verses like Nour 31, Momenoun 5 and Nesa 72 and 32 which are summarised as following.

First verse: (Nour, 31): based on narrations (Koleinirazi *et al.*, 2002) this recited the interpretation, explained that mean of the said verse is to prevent from seeing the vagina. If we suppose that it is true on fecundation, the problem is that mean of the organ is to maintain herself from others not locating sperm of stranger's man into womb or by artificial action, so that this action is to maintain from others.

Second verse (Momenoun, 5): it is not accurate to reason it, since; firstly, the subjects are male even with sharing pattern (Bejkourdi, volume 2:40), it cannot be included it. Secondly, in terms of above verses and similar verses, the content of adultery is to impose specification from adultery. Thirdly, customary citation is derived from normal adultery by verses 22, 23, 34 of Nesa.

But, about legal aspect of man sperm fecundation into woman' womb, who is prevented from intercourse, we can say that: First narration: the narration which is stated by deceased Koleini Razi, translate and interpreted from Imam Sadegh.

Although, it is prohibited to locate man' sperm into womb of foreigner wife but firstly, it is considered to locate sperm by intercourse action, that means if adultery is performed, it is included course, secondly, it is true that it is about locating man' sperm into wife womb and men are on verdict but it is customary deviance by intercourse. Thirdly, it is customary to locate sperm by intercourse thus, since this deed has problem and another verses are used which have problematic second narration

It is shared to reason in above subject because of narration from unknown persona namely Ghasem Ebn-e-Mohamad and Ghasem Ebn-e-Mohamad and Ghasem Ebn-e-Mohammad Esfahani. And also, it has many problems because of reasons and stated that the intercourse is premised which is named as adultery. The determination of adultery needs strong reasons. Thus, it has many problems to take the reason.

**Third narration: Eshagh Ebn-e-Ammar:** The deed of narration is weak sine Hassan Ebn-e- Abi Hamzeh cited reasons but the narration reason prevents from this action, first, locate sperm into wrong place and it is about prevention legal intercourse. Maybe, the interpreter shall cite the legal point thus, the said narration is true on fecundation which is done by man and if it is due to fecundation, doesn't include narration. And also, as for said causes, the jurists believed that there is not explicit prohibition in application artificial fecundation by non-husband sperm.

**ARTIFICIAL FECUNDATION AND TRANSFERRING FETUS FROM OVULE AND MAN AND WOMAN SPERM IN FOREIGNER WOMB (SUBSTITUTE MOTHER)**

In this case, it is supposed that the child derived from sperm and ovule which is named as fetus transfers from ovule and grows on it. Sunnite Jurists believed different insights about use of womb. Shiite thinkers stated different insights about substitution womb. Ayatollah Mohammad Fazel Lankarani did not regard to use womb of other wife in order to grow child as accurate. In other side, Ayatollah Naser Makarem Shirazi says fetus transmission after formation of fetus is permissible before and after it. Ayatollah Khamenei doesn't prohibit fetus transfer.

Ayatollah Mohammad Momen believed that to locate sperm of man and woman is permissible in womb of another woman. It is not prohibited to transfer sperm by another mother. Firstly, there is not prohibition on it, as indicated previously (Nour, 31) and Momenoun 5, it is not included the thesis but also it is prohibited to do it. Secondly, since locating sperm into womb is prohibited thus, it is not supposed that the womb is suitable place for growth of fetus and it is not included in said narrations and it is supposed that it is due to power of husband. Thirdly, when doubt is risen, the narrations are used that regarded accuracy of it. But it is regarded as innocent in the time when it is regarded as wrong action but the caution is done when it is not necessary (Ghorban, 2003).

**Artificial fecundation and gifting ovule:** The mean is to locate ovule by foreigner person in order to reproduce. For example, the couples who want children and the wife lacks ovule or she is not able to be pregnant, the fertility is done by sperm of fertile husband in laboratory and the fetus is transferred into womb of woman who wants to be pregnant. The respected jurists offered different insights about it: Ayatollah Safo Golpayegani believed that, we can point to caution principle in order to prevent from fetus transfer into foreigner womb and locate ovule into womb.

Tabrizi (2003) regarded to remove ovule from foreigner woman womb and locate it into woman's womb as accurate if it is avoided from prohibitions. Ayatollah Yusef Sanaee believed that it is permissible to mix couple sperm with ovule of other woman since it is neither adultery nor to locate sperm into other womb. Ayatollah Khamenei believed that if we use ovule of other woman in order to inoculate, it is permissible (Khomeini, 2003). About gifting ovule, there are two hypotheses, the case which is done by transferring fetus and the case when sperm

fecundation is done in the womb of owner of sperm. Doubtless, in first case, there are reasons in which don't cover totality of cases since the fetus is done out of womb and it is permissible to transfer it because there is no reason to maintain it and in the time of doubt, innocent principle is done. In second case, we will see that does provide fecundation between sperm of husband with ovule of another woman is permissible or not. And if we believe in prohibition about ovule injection, it shall prohibit fecundation between sperm and ovule in womb. What are included in the Koran verses will be true about it and there is no difference between them, thus, it is said that when the ovule is used that woman who is owner of sperm is spouse of man who lacks ovule and is not able to be pregnant. Thus, it will be resulted to maintain fetus out of womb.

Thus, the words like that not included sperm injection and foreigner sperm and ovule between woman and man and thus, there is no hypothesis about it.

**Artificial fecundation and gifting fetus:** Fetus gifting is regarded as one of the new fertility methods. Usually, use of this method is selected as the last method. Normally, the persons don't present fetus formed in the womb but agreed by giving gamete and locate it into authorised centre of infertility where present the fetus to infertile couples and their nature is unknown (Moughani, 2005). As said before, sometime ovule is fertile and transferred into pipe before first division and sometime fetus is transported into womb when the artificial fecundation was done in steps of 4-8 of cellular division. In previous discussion, we concluded that prohibition in Koran and narrations are due to new fertility methods like transfer zygote (fertile ovule) and its next growth steps for transporting zygote are permissible. In gifting fetus mode, the gifting foetuses are used as if zygote or fetus is legal relation between couples instead of sperm which is determined as legal point of view and can grow it as naturally. As for above analysis, it can be claimed that as for legal reasons and factors, it cannot be offer legal factors in order to prevent from zygote transportation into womb of other woman. Gamete transportation and fetus are important subjects which discussed in advanced countries and the regulations were approved about it. It is obvious that the law maker cannot be indifference to the above subjects and the laws for above case was approved on 11.03.2003 by Iranian Consultatory Council and confirmed by Guardian Assembly on 16.09.2003 and its bylaws was approved on 2004.

**Relation:** The question is raised here is that is child derived from fecundation regarded as adultery or due to

marriage or illegal? If it is proved that the child is born naturally, he/she has all legal rights. And in this section, the child has marriage. As result, this relation is due to marriage and its special verdicts are not recognized. Since, artificial fecundation had not historical background, thus it was not covered by legal verdict. In order to legalise it we shall discriminate the children in terms of verses and philosophical point of view and we recite narration of Mohammad Ebn-e-Moselm: Ebn-e-Moselm said: I heard Aba Jafar and Aba Ebdellah said: Hassan Ebn-e-Ali attended in meeting of Ali when some persons entered and asked question.

The question is that a man intercourse with his wife and the woman intercourse with girl and her zygote entered into woman of girl and she was pregnant what shall they do? Imam Hassan says: firstly, refer into woman and give her dowry of that girl. Because the child is not exited from her womb otherwise her womb is torn, thus, since the woman had husband, thus the child will be returned into her father and the girl shall be laced (Ameli, 1991). The narration is so close to foreigner sperm to transportation of fetus and the verdict is different. What is reason is that fetus transportation is different and regarded it as legal claims.

**Origin of relation of child:** It is necessary and suitable to discuss relation of child as separately. Origin of relation of child into father has medical background and the formation material is zygote which is related to father and it is doubtless that this scale is same as. This content is found in Koran because it is recited as following:

And, it is who creates human and approved relation and families. Water word means fetus that is human is created from fetus like verse (Ensan, 2) The last probability is enhanced by Alame Tabatabaee (Almizan, 1991) and it is pointed to origin of child into father (Eraf, 172), (Nesa: 23).

**Origin of child into mother:** There are variety theories about origin of child into mother. Some of jurists believed in relation of child into mother who born him. This group reasoned some verses. The first and most important verse which is cited named Mojadeleh 2: they are not their mothers, the mothers are who born them only. Another verse is Ehghaf 15 which states that God described Mother as: she delivers and child birth and tolerates the difficulties. Then, it is not different from original concept in which if woman doesn't tolerate the difficulties, she is not mother. This group regarded origin of child into one factor and that is male sperm but regarded relationship between child and his mother.

Heritage relationship is obtained by ovule into his mother. Birth and deliver relationship is realized by womb. The opponents of the theory believed that mother is regarded as owner of ovule and womb. Their reason is that the narrations are derived from above reasons and the mother is person who fetus is formed in her womb and sometime the children have two mothers that is each two mothers are real ones (Mousavi, 1993). Other believed that when the ovule is from woman who doesn't deliver it and there is no owner of ovule and sperm, no one regards as mother (Rezaeian and Moalem)

Other believed that although, they are not regarded as relative mother but the child has relation with owner of ovule and each of them regarded as mother. Third group believed that the scale for being mother is same as being father. The custom regards woman who has first rank and that woman has not owner of ovule because ovule and sperm are formed from it and finally, nutrition, education and bodily and mental growth are so important (Shahidi, 2006)

From medicine point of view, it is proved that origin of formation and cellular establishment is woman ovule and it is not doubt that in fact, the child if derived from woman ovule (Spearof, 2002). In fact it was proved that birth child is real and Islamic law maker maintained scientific and real factors in the communication. It is possible to be difficult to accept two mothers but from genetically point of view, half of shares belong to owner of ovule. Between contemporary jurists of Shiite, Ayatollah Mousavi (1993) believed in two mothers. He reasoned that relation is credit relationship and derived from natural relation. Now, the question is that can the custom discriminate between two theories and said that each two cases can be reasoned that is owner of ovule and woman who educate fetus in her womb can be regarded as mothers. And there is no problem for it.

Thus, they regarded custom as selection of children into mother and believed that the custom regards two mothers (Ghorban, 2003). This theory can solve legal problems due to child.

**Method for proving relationship:** What is foreseen in the law is discussed, it is recognized that two articles like 1158 and 1159 predicated the case. In some of faces of artificial fecundation, the pattern is used in order to relate child into her mother.

**Artificial fecundation and its comparison with adultery:** Some of contemporary jurists regarded relationship between artificial fecundations with adultery as imagination and write that: sometime it is supposed that the child derived from artificial fecundation doesn't heir

and since he/she doesn't heir, thus he/she doesn't take heritage. This word is inaccurate because what is cited as imagination is that there is no relationship between born and who birth child and owner of sperm and owner of ovule thus there is no heir relationship. This analysis if not correct because the verdicts are depend on titles of subjects not on their scale and we cannot inform them and compared with adultery and artificial fecundation and as result, the heritage is regarded between them (Moshenim, 2003).

### CONCLUSION

Development of medicine and efforts of doctors solved many problems and found new challenges for infertile families. There are many hypothesizes in which there are extreme. Some authorized artificial fecundation of man sperm into their wife by medical tools and against, others pointed to all permissible dimensions but there is not agreement between them. By lacking legal implicit and difference between jurists, it is conferred that how the problems between doctors, wife, husband and presenter of sperm will be settled. And who will be supervisor of the child? Since in our legal system, some of cases are not contractual, thus the specialists if new sciences proposed different methods in order to clear it and discuss its social effects, then the jurists recognize its limitations. It is better to consider following points: When the couples are treated, they cannot refer to third party, the treatments will be offered for couples who live for time and have been consulted by written consent. It is better to avoid from cautions in policy making and don't prohibit fertile methods. About touching and seeing opposite sex, the above actions will be done by homo-sexual doctor. In the event of authorising sperm or ovule, it is better to observe confidentiality but registration of information causes to prevent from homo-blood marriage.

Formation of organization and society which supervises on infertile problems and permission for establishment by the authorised persons and inform the patients about ethics and customs in society. Nature of relation (father and mother) is credit relationship from Koran point of view which points to creation of child from sperm and ovule of another human. But in all manners when two women play their role in reproduction, they are regarded as mothers and this relationship is true, of course, in some cases, child lacks legal relationship from father point of view which his responsibility due to his mother. Relationship due to artificial fecundation is related to civil law like article 1189 about forcible supervision of father and article 1045 about prohibition of marriage with relatives.

Adultery is same as relatives, thus as for scale of adultery, relationship of children can be regarded as adultery ones and they regarded that this relationship can be important. Relationship due to sperm-natural father of owner sperm is recognized. There is no heritage relationship between couples who lack sperm, thus, it is necessary to witness share his heritage and his custody will be due to his supervisor. Relationship due to mother-substitute- natural father is important and natural mother is owner of sperm and ovule. It is proved relationship between child and father and heritage is located and if mother is unknown, the heritage is negated and all rights of child will be returned. Relationship due to gifting sperm- natural father and natural mother and owner of womb is important. There is heritage relationship between couples and children and his custody will be due to parents and if the relation is unknown, the relation will be lost.

Relationship due to gifting zygote, natural father and natural mother and owner of womb is important. There is no heritage relationship between couples who lack sperm and child because of lacking heritage but it is supposed that the child will be maintained by the parents and his alimony is predicated and will be foreseen by court. About heritage, there is relationship between heir and heired. This relationship is located between owner of sperm and owner of ovule only and child who born from it and the child will be included heritage in terms of law and the scale is fetus out of womb weather is frozen or alive.

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