



## Review the provisions of inheritance in artificial insemination in jurisprudence and Iranian law

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### **ABSTRACT**

In the issue of inheritance in artificial insemination using sperm of husband, child is attributed to spouses and consequently inheritance is established among them. Also, the husband without sperm does not have any relative relationship with born child in the treatment of infertility using alien sperm and therefore do not inherit from each other and the inheritance relationship will be established between the child and the owners of sperm and ovum due to prove relative relationship. There is disagreement between jurists about inheritance of child born out of insemination with alien sperm. Three theories are raised in this regard: the permit of child inheritance from artificial insemination that the Supreme Leader and Seyed Yousef Madani Tabrizi are part of this category. Impermissibility of child inheritance by artificial insemination, Mohammad Hassan Marashi Shushtari and Makarem Shirazi are in this group. Caution: some contemporary jurists are cautious regarding inheritance between children by artificial insemination with alien sperm. Imam Khomeini (RA) and Golpaigani are in this group. In Iranian law, according to article 875 "If the embryo is born lively, he inherits" and in accordance with Article 878 "If the embryo is hindered of inheritance of existing persons, estate is not divided until the birth of child. However, if embryo is not impeded their inheritance, it is necessary as much as share of two boys from estate to be subject for embryo to the condition to be made clear later.

### **Keyword:**

artificial insemination, inheritance, jurisprudence, Iranian law

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## INTRODUCTION

Third party intervention in artificial human reproduction is caused new debates in privacy rights, particularly the rights of the family that by enormous scientific advances and the use of sperm, ovum or embryo donation and the use of surrogate mothers is possible. These methods are known as artificial insemination with alien sperm, surrogate mother and donation of ovum or fetus (Nayebzadeh, 2001, p. 76).

Exploitation of these methods even though in some cases may lead to acute issues in the realm of the law and jurisprudence, will have such consequences that consensus of the scholars of the fields mentioned is far from impressive. So human felt the necessity of legislation for achieving a view and criteria of unit action along with medical science advance and provide the above mentioned methods. However, in some countries, this issue is not as warning for legislator yet and the growing population due to human achievements is left to its own mode, wandering and uncertainty (Mousavi Bojnourdi and Jabbar Zare, 2009, p. 82).

This issue has had many challenges despite all the opportunities and blessings that followed as well. The challenges are raised in various aspects including religious, medicine, ethical and legal aspects that each of these aspects in turn has had many questions and comments. However, one of the major concerns in this regard is the issue of inheritance because some of the new methods of fertility are such that cause doubt in children's inheritance. The present article reviews the provisions of inheritance in artificial insemination in jurisprudence and Iranian law and responds some doubts in this regard.

### 2-1. The definition of artificial insemination

From the perspective of medical, insemination is a process by which, spermatozoa is collected of men and will be put in the female reproductive system by unnatural method, in the view of jurisprudence, human production outside the uterus other than intercourse method (normal) or in uterus through planting is called artificial insemination (Momen, 1995, p. 80). In another similar definition has been said that artificial insemination is, ingrating man's sperm in a woman's womb without sexual intercourse, by artificial medical means in order to fertilize the woman's ovum and the formation of fetal (Araghi et al., 2008, p. 423).

### The definition of inheritance

The word inheritance means survival and heir means remain. Inheritance is used in a meaning (Bagheri Nasab, 2012, p. 163).

Two meanings are mentioned for the word inheritance: infinitive of inheritance (inheritance), means entitled estate and objective meaning of inheritance (something which has been transferred to inherit) ie something that human is entitled. In the legal term, inheritance means the transfer of property of dead man after the death to his heir (Shahidi, 2002, p. 32) Or it means a right that after the death of person transfers to the survivor (Katouzian, 1373, p. 81).

Inheritance in Islamic jurisprudence is an Arabic word and its infinitive meaning includes: a man with death of other man is entitled by his estate by virtue of relation or cause (Jafari Langroodi, 1978, p. 20).

## Inheritance in artificial insemination

Some issues are raised in a normal child inheritance with his parents that when the same issues at the same time is repeated about artificial insemination inheritance in the case of proving relation, there will be happened interesting and vague concepts.

According to article 875 "If the embryo is born lively, he inherits."

According to article 878 BC "If the embryo is hinder of inheritance of existing persons, estate is not divided until the birth of child. However, if embryo is not impeded their inheritance, it is necessary as much as share of two boys from estate to be subject for embryo to the condition to be made clear later. According to the two articles mentioned, two problems are raised here.

First, can infant before being transferred to the uterus and if after transferring to the uterus to be born alive, inherit from men and women owner of sperm? The answer to this question is clear; because although commonly, "embryo" is not called to the child that is still outside the womb, but what is the main subject of the sentence is the potential human, although in the development stage is located outside the uterus.

Second, assuming the positive response of the above question, Is it necessary according to Article 878 to be abandoned as much as the share of two boys or not? It can be answered to such questions that when there is the possibility of coagulation and formation more than one infant outside the womb as the normal state in the sperm fertilizing, provisions of Article 878 is implemented, but if the appearance of more than one person may not be possible, put aside more than the share of one boy will not be necessary, because in this case, the actual condition and potential inheritance is become clear.

One of the conditions of inheritance is the existence of heirs while the testator's death. Without heirs, the testator's property transfer is unthinkable. According to Article 875 of the Civil Code, the condition of heir is being alive during the testator's death. In addition to the testator and the estate, all people who are being alive at the moment of death of the testator and there is relative or causal relationship between them, regarded as heir and inherit from the testator with respect to dead person. One of those who may exist at the moment of death of testator is fetus or embryo. According to Article 957, embryo enjoys of the Civil Code. Donations, wills and inheritance are among the rights that embryo can benefit them. The conditions of benefitting fetus from deceased estate are:

First, coagulation of sperm at the moment of testator's death, the entry of "spermatozoa" in "ovule" shortly after the arrival of the man's sperm in a woman's uterus if other conditions are favorable resulted in coagulation of sperm. With this situation, if coagulation of sperm is done after man death naturally or by synthetic methods after man's death, fetus formed in this case not inherits from his father. The reason for this is that at the moment of coagulation of sperm, the fetus testator ie his father has not been alive. According to article 875 of the Civil Code, the inheritance condition is being alive during the testator's death and if there is embryo, he inherits if the sperm is coagulated during the death and be born alive if the fetus died immediately

after birth. The moment of coagulation of sperm is identified by medical experimentation or by legal circumstances (Shahidi, 1999, p. 50). According to Article 877 of the Civil Code, "the difference in the time of coagulation of sperm, legal circumstances that is established for proving relation, will be respected." The purpose of legal circumstances is the proof of at least six months and a maximum of ten months, the intercourse of woman with husband to the birth of the child mentioned in Articles 1158 and after it. According to Article 1158, child at the time of marriage belongs to the husband, provided that from the date of intercourse to the birth time, at least six months and a maximum of ten months is the distance of the intercourse of woman with husband to the birth of the child mentioned in Articles 1158 and after it. According to Article 1158, child at the time of marriage belongs to the husband, provided that from the date of intercourse to the birth time.

The second, born alive of embryo is one of the other conditions to inherit the fetus born alive. If the fetus is died in the womb and he is born dead or the dead one to be out of the mother's womb by surgery, he will be disinherited. If the testator death is after coagulation of sperm and before the birth of the fetus, the born alive inherits estate from the moment of death. According to the Article 875 of the Civil Code, the condition of inheritance is being alive during the testator's death and the embryo inherited if the sperm is coagulated during death and to be born alive if immediately died after birth.

The third, child is suspected to be alive, if the child in the womb and up to the moment of birth is alive, but his life is questionable after the moment of birth, the child not inherits. Article 876 of the Civil Code stipulates: "by doubt in living while birth, the sentence is not inheritance" if there are signs of life after the birth of the child, he will benefit from the inheritance, "the embryo's rights are in his existence by the credit of essence of human" (Katouzian, 2003, vol. 2, p. 217).

From the moment of coagulation of sperm, calling the fetus or embryo to live creature in common, especially in the medical community is permissible. If there is fetus at the moment of death of the testator in addition heir, and born alive of fetus would be deprived of all or some from the heirs, there is no possibility to divide the estate till the birth of fetus.

If the born alive of child is not prevented from inheriting others, but only reduce their contribution, the division of inheritance will be happened. But to the extent of his share set aside to meet his share of the estate if there is the possibility of determining fetal gender by means of medical and If for some reasons, including the inability to determine the gender in the early days of embryogenesis, the gender of embryo is not clear and other heirs are insisted to be divided, on Article 878 of the Civil Code, the equal shares of two sons sets aside and the rest of the estate is divided. Obviously, if the embryo is born alive and they are two sons, the mentioned share is given to them to equally divide. If it is a boy or a girl, the residual is paid to other heirs and if the fetus isn't born alive, all the mentioned share is divided among the heirs based on inheritance regulations.

According to issues conducted, several elements are necessary to fulfill inheritance:

1. The testator means, if there isn't anyone to inherit from

him, inheritance will not be applied outside. Heir. Inherited (estate), it is called heritage and is also everything that is remained from dead person: such as the financial and non-financial properties and rights that is transferable. Therefore, if there isn't one of the three organs, inheritance will not be applied outside (Gheblei Khoi, 2003, p. 23).

2. The inheritance is established between two people if relative or causal relationship is established between them, it is called causes of inheritance in Islamic law. If the kinship or conjugal relationship is established between the testator and heir (Gheblei Khoi, 2003, p. 368).

3. In accordance with Article 861, relation is known one of the causes of inheritance, inheritance of the children who are born through artificial insemination is subject to proof or disproof of the relation among child and the sperm owner and ovum. If the relative relationship between the child and the owner of sperm on the one hand and on the other hand ovum owner to be recognized, inheritance among them is established. Conversely, if the relative relationship between the child and his parents is not established, the issue of inheritance among them will be eliminated (Safai, 2012, p. 37).

#### **Inheritance in artificial insemination with sperm of husband**

Most scholars believe that when artificial insemination is done using the husband's sperm and the ovum of woman, the child will be attributed to spouse (Mousavi Khomeini, 2002, p. 564; Khamenei, 1994, p. 281; Makarem Shirazi, 2013, p. 491; Hosseini Sistani, 1999, p. 747). Lawyers also believe that in this kind of insemination, there is the relationship of spouse between men and women who are parents of child and child is created from combining the sperm of these two and the child is born, it is legal that child has all necessary conditions for legal relation and the difference that artificial insemination has with normal cases is that in artificial insemination, the child is not created by intercourse of man and woman and this issue not has any effect in legal relation (Emami, 1994, p. 184; Katouzian, 2015, p. 329; Safai and Emami 2001, p. 102).

It is clear that the child of this insemination has no difference with child due to intercourse, and there will be inheritance between his mother and father although in relation to the transfer of the sperm into the uterus of woman may be done illegal action such as touch the body by foreign (Bandarchi, 1993, p. 263). There is no problem in attributing the child to the owner of sperm, because he is the father of the child, as well as religious reasons and verdicts of the jurists of all religions and Islamic tribal implies this issue. Therefore, child inherits from the couple definitely and vice versa.

According to Article 861 to 936 BC, father and mother and children and grandfathers and grandmothers inherit from the deceased respectively. Child of artificial insemination with sperm of husband inherits from all the relative relatives and all of relatives mentioned will inherit provided that the conditions of inheritance to be provided and there is no prevention (Ansari and Zaheri, 2005, p. 2).

#### **Inheritance in artificial insemination with alien sperm**

If the husband not has fertilized sperm, but the wife has fertilized ovum and healthy uterus, the treatment of infertility is usually done by sperm donation, about the issue of sperm donation, the first question that arises is child's relation status born with the

owner of sperm on the one hand and the owner of ovum (the wife) and the wife's husband. About the husband without sperm, it must be said child not belongs him any time, because the child is not born from his fetus and in Islam is not permissible to consider another child as his own (Moghniyeh, 2015 M p. 372).

But there is difference between some lawyers about the owner of sperm that insemination is done with men and women's notice or without notice them and child born of artificial insemination in the case of informing both men and women as their own child is considered due to adultery and believe relation and subsequent inheritance is not fixed and if their ignorance, the doubt is considered in parenting order (Emami, 1994, p. 165; Katouzian, 2003, p. 27; Shahidi, 2002, p. 102).

Therefore, on the basis of jurists, child of adultery not inherits from their parents. On this basis, though child born from artificial insemination with the alien sperm joins the father ie owner of sperm and mother and adultery in the event is unrealized, but perhaps it can be said as child born of adultery, child not inherits from them and inheritance among them is not proven. (Rabbani, 2005, p. 130.). In this regard a number of contemporary scholars, including Hosseini, Khamenei, Sanei, Madani Tabrizi, Momen, Yazdi believe that child of artificial insemination of alien sperm whether the owner of sperm aware of the issue or ignorant to sperm owner is considered his child because in this type of insemination, adultery is not happened to the child considered to child of adultery (Safai and Emami, 2001, p. 104).

As child born from artificial insemination of woman's ovum is not considered the child of adultery and adultery in the event is not happened so there is heir between mother of child as mother and child due to natural intercourse in accordance with article 884 (Samadi Ahari, 2003, p. 116). In this issue, artificial birth attributes to his natural mother and the inheritance is established between child and natural mother and his maternal relatives (Rezania Moallem, 2007, p. 403). If it is specified the sperm owner is the baby's real father in this relationship, owner of sperm as the owner of the ovum is not commit adultery, and this type of insemination, according to the definition of adultery is nothing like adultery to the child is the result of adultery so the owner of sperm inherits him as the child of sexual intercourse inherits his father and has relation closeness with him.

There is disagreement between jurists about the child of insemination of two strangers, in order of their inheritance (children and parents). There are three theories on this subject

A) Permit the child inheritance of artificial insemination: Supreme Leader is including the group (Khamenei, 1994, p. 282; Hosseini Sistani, 1999, p. 474).

B) Not permit the child inheritance of artificial insemination: Mohammad Hassan, Marashi Shushtari and Makarem Shirazi are including the group.

C) Caution: some contemporary jurisprudents regarding inheritance between children by artificial insemination with alien sperm are cautious they are including the group. According to this theory due to the complexities of the legal issues arising from different assumptions of artificial

insemination, financial problems must be resolved by compromise.

Imam Khomeini says in this regard: in intentional insemination of alien sperm of wife in inheritance issue should be cautious. In such a way that child born in this way will not be completely deprived from inheritance and the child cannot consider all his inheritance as his own property, but compromise with the heir (Mousavi Khomeini, 2001, p. 565).

That legal opinion is objectionable because, firstly, inheritance rules are including mandatory rules and its authority is not with individuals. Secondly, this solution not specified the obligation on the parties not compromise. Therefore, it can be said that the issue of inheritance is based on the proof of relation and in any case that the relative relationship is fixed, the inheritance will be fixed.

### **Conclusion**

It should be a relationship between inherited and heir in the issue of inheritance and this relationship is only between the sperm owner and ovum and child born. In artificial insemination using sperm of husband, child is attributed to spouse and consequently inheritance is established among them. In the treatment of infertility using alien sperm, husband without sperm not has relative relationship with child born and therefore do not inherit from each other and due to the relative relationship between the child and the owners of sperm and ovum, inheritance relationship will be established In the case of a child whose sperm is coagulated after the death of parents not inherits from the owners of sperm or ovum and the condition of inheritance of these children is the existence of embryo at the time of the testator's death. However, in 2003, the Parliament approved the law of fetus donation to infertile couples and the implementing regulations adopted and published in 2004. But there are no provisions about inheritance of children by artificial insemination in any of the laws. Therefore, it is necessary to Iranian legislator with the views of jurists, lawyers and scholars of relation status, inheritance and other determine and approve effects of children resulting from artificial insemination in different types of artificial fertilization methods to end the debates and diverse opinions on the action stage.

On the other hand, there are various issues surrounding inheritance about using surrogacy the owner of ovum will be legal mother in any case if we consider two separate mothers and the inheritance will be established between parent and child, even if the owner of ovum is the owner of rented womb, inheritance remains again.

There are no provisions about inheritance of children by artificial insemination in any of the laws. Therefore, it is necessary to Iranian legislator with the views of jurists, lawyers and scholars of relation status, inheritance and other determine and approve effects of children resulting from artificial insemination in different types of artificial fertilization methods to end the debates and diverse opinions on the action stage.

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