

Legality of Artificial Insemination in Islamic Law in Iran

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Abstract: Artificial insemination or pregnancy without sexual intercourse is one of the new subjects in medical science that it can be discussed not only in medical but also in psychology, sociology, philosophy, religious and law. This paper intends to deal with the artificial insemination in Islamic jurisprudence and law in Iran. Reasons of verses and narratives which imply the permission or religiously forbiddance of artificial insemination have been investigated to determine its legitimate techniques. It is certain that spouses own gamete insemination permission is possible in any way provided that religiously prohibited preparations are avoided. There are different opinions about the donor gamete interference. But, because the great leadership of Iran permits it so artificial insemination is not a crime according to law in Iran, and there is no law for supervision of this act.

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1. Introduction

The humankind's creation is very complicated and full of mysteries and its story is wonderful. According to holly books especially holly Quran except Adam that had been created from mud, the others have been created from combination of sperm and ovum. But some couples are infertile and it has been an unsolvable problem for many years. But in modern world, as medical science progresses, many of infertile couples handle their problems by benefiting from modern infertile techniques such as Artificial Insemination.

2- Artificial Insemination

Artificial Insemination is an infertile treatment method that causes pregnancy without sexual intercourse (Nayebzadeh, 2001, 9).

In this method processed sperms have been transferring to different parts of woman's uterus and helps sperm and ovum contacts without sexual intercourse, so this method has a lot of similarities to normal pregnancy (Rezaniya Moallem, 2004, 52). Artificial Insemination techniques are as follows:

1- Homogeneous Artificial Insemination

2-Heterogeneous Artificial Insemination

2-1- Homogeneous Artificial Insemination

In this technique the wife's ovum is inseminated by husband's sperm in any case sperm or ovum be infertile and it is done in two ways Intra Uterine Insemination and In Vitro Fertilization (Pourbakhsh, 2009).

2-2- Heterogeneous Artificial Insemination

* Donor Insemination:

In this technique the donor's sperm is inseminated by the infertile man's wife's ovum in both IUI and IVF ways (Jafari, 2003, 191). In this

technique although the fresh sperms are useful but mostly the freeze sperms are used.

* **Oocyte Donation:** Sometimes the wife has healthy uterus but she doesn't have any ovum or she has ovum but because of some problems such as sever adhesiveness of pelvic it is useless (Rezaniya Moallem, 2004, 100). So, in this cases oocyt donation will be useful.

* **Surrogacy:** Sometimes wife has ovum but she doesn't have womb or her womb isn't able to bear the embryo and causes abortion, and sometimes childbirth is very dangerous, so the embryo has been transferring from ovum owner's womb to substitute womb and after the pregnancy period and birth, the sperm and ovum owner's due to the concluded contract will take the protection of the newly - born. (Rezaniya Moallem, 2004, 97).

* **Embryo Donation:** When there isn't any usual treatment for infertile spouses embryo donation has been suggesting to them (the same source).

In this technique the lawful spouses' sperm and ovum is inseminated in laboratory and after the first division in four days the embryo has been transferring to applicant womb (Nayebzadeh, 2001, 27).

3- Artificial Insemination Techniques in Quran

There is no verse about Artificial Insemination in Quran but everything that implies sexual intercourse and marriage can be reason for it. Like verses bellow that jurisprudents can refer to them.

“And say to the believing woman that they should not stare those eyes in the men's eyes and they should subdue their carnal desires”. (Quran, Noor, 31)

“The believers are those who restrain their sexual passion save with their wives of free woman or those slave – girls whom they have possessed in such case there is no blame on them. But those who do other than this, they are transgressors from Allah’s limits”.(Quran, Moomenoon,5-7)

Any time these holly verses explain about eyes there is the discrimination proposition (those) to clear that only some looks are religiously prohibited but when the topic is subdue of carnal desire the discrimination proposition is eliminated. So according to the principle that, it commands any time the elimination be entirely it includes all aspects of the matter, therefore it is necessary to all woman and men to subdue their genitalia from every things. So in these verses subdue includes every things for example adultery and other unlawful sexual intercourse and also, artificial insemination (ALhosseini, 1999, 84 – 1047).But we don’t accept it because we believe that in these holly verses the artificial insemination isn’t prohibited absolutely because the focus is on the genitalia’s subdue from everybody except her husband and the woman herself (Rohami, 1398, 10).

Also the subdue of genitalia means genitalia should be kept away from everybody except husband’s. Some of shiatt’s interpreters declare that the genitalia should be subdue from others look not from adultery and pederasty (Altabatabaei, 1973, 15th vol, 111).

Forbidden to you [for marriage] are: your mother, your daughters, your sisters, your father’s sisters, your mother’s sisters, your brother’s daughters, your sister’s daughters, your foster mother who gave you suck. Your foster milk – suckling sisters, your wives’ mother, your step – daughters under your guardianship, born of your wives with whom you have had private association, but there is no sin if you haven’t had that association [to divorce her and marry her daughter] and [also is forbidden] the wives of your sons who are of your lions, [not step – son]; and forbidden is two sisters in wedlock at the same time, except for what is past [and before this decree]; verily, Allah is the Merciful Forgiving. (Quran, Nissa, 23)

At first it seems this verse involves some women are religiously prohibited for men and because this prohibition is in general therefore it refers to women’s genesis. So it includes every things such as Artificial Insemination. However, it is done by lab instruments.

But we don’t believe like that and because it causes the more of most allocation so the verb should be chosen according to the point views of common. So it (the chosen verb) must be sexual intercourse. Also the verse declares that men are forbidden for marriage the

women who are listed in this verse (Haram Panahi, 1997).So, artificial insemination is not forbidden.

4- In narrative

* Ali Ibn Salem cites: Imam Sadegh (PBUH) says: the severest punishment in the day of judgment is for the man who has sexual intercourse with the religiously prohibited woman (Koleini, 1997, 5th vol, 529).

We can understand by means of this narration that this kind of sexual intercourse is a mortal sin. Because it causes the insemination of the religiously prohibited sperm and ovum that religious has prohibited it (Moomen Qomi, 1994, 82).

* Holly prophet says: killing prophets, destroying Kabeh, committing adultery, and transferring sperms to adulteress’ womb are the worst acts at all (Sadoogh, 1995, 3rd vol, 559).

In this narration we can understand having unlawful sexual intercourse is a sin and sperm transferring to adulteress’ womb is another sin, and both of them are mortal sin (Rohani Ali Abadi, 1998).

But as a result

1-The document of both narratives is invalid for example Ali Ibn Salem isn’t reliable.

2-Sperm transferring and artificial insemination are different matters, because sperm transferring in this narration means having unlawful sexual intercourse such as adultery (Haram Panahi, 1997).

5- Artificial Insemination Techniques in accord with Law of Iran

According to constitution law in Iran, artificial insemination can be discussed in civil law and Islamic penal law. Although the court orders and judging rules can be useful but because they get their proof from law therefore they aren’t dependent sources.

So is Artificial Insemination a crime in Iran?

5-1- Civil Law

Civil law discusses the law orders of matters. So it includes the orders of parentage, inheritance, intimate, and alimony But the parentage is the most important matter. Because when it will be recognized the other rights will become clear according to written laws. For example 975th articles declares: the orders of civil law for any newly-born are practicable immediately after birth.

On the other hand there isn’t any independent sentence and circumstance for it. So is there another way?

According to 3th article of civil procedure law that it has been legislated in 2002; trial judges must judge according to the laws and pronounce judgment. But if the enacted laws haven’t been completed and cleared and there be conflict of

opinions or there isn't any law principles for a matter at all. Judges can pronounce judgment according to Islamic reliable rights and great jurisprudents' verdicts. So if they disobey, they will have been convicted to punishment.

For Islam accepts customary. So "law principles" in 3th article means customary. Therefore, in any cases reference to Islamic reliable sources and great jurisprudents verdicts is necessary. But it isn't helpful for recognizing the crimes. So, as a result the crimes haven't been explained in civil law.

5-2- Islamic Penal Law

Islamic Penal Law is the main source for prohibited acts and crimes. Its discretionary corrections include 232 articles and 44 notes that it had been approved on – the – record meeting on 5. 22. 1996. After that the Council of Guardians has confirmed it on 5. 26. 1996. But there isn't any rule about artificial insemination. However, it has been done in Iran since 1989 but there isn't any statutory law about it in Islamic Penal Law.

According to 637th article of Islamic Penal Law, if any unlawful partners do some unchaste and illegal sexual acts except adultery such as kissing and touching. They are criminal and they will be given 99 lashes.

According to the 2th article of Islamic Penal law if there be a punishment for doing or abandoning an act in law so this act is a crime, in contradiction if there isn't any punishment for it therefore, this act isn't a crime. So, artificial insemination isn't a crime in Iran because there isn't any punishment for it in Islamic penal law.

The third article of civil procedure law declares: if there isn't any letter of law for an act, so its rights can be found in customary. The most outstanding custom and command in Iran is jurisprudence laws and Islamic orders. So, according to Islamic orders and Islamic jurisprudence using the donor gamete is prohibited. Because the 3th article of civil procedure law is more superior than the 2th article of Islamic penal law. So using donor gamete is a crime. According to 16th article of criminal law the judge can command the punishment, but the punishment should be less than Allah's limit for adultery (less than 100 lashes).

According to Islamic law if there be a conflict of opinions at a new matters all judges should pronounce judgment according to the great status of leadership's opinions. So, judge should respect the great status of leadership's opinions, if there isn't a statutory law for a matter.

The great status of leadership in Iran permits all techniques of artificial insemination absolutely in

any way provided that religiously prohibited preparations are avoided.

So, according to 4th, 16th, 36th, 37th, and 169th articles of constitution law Artificial Insemination isn't a crime in Iran.

The rules of Embryo Donation are the only rules in Iran that consider artificial insemination its plan had been announced in House Representatives on 10. 10. 2001. And after that it has been sent to health committee as the main committee and to judiciary committee as the subcommittee. At last it is adopted in on – the – record meeting on 11. 20. 2001. And the Council of Guardians of Constitution admitted it and its executive agreements have been written in 2004 by Department of Health and Department of Justice. After that 256th branch of family court announced it on 10. 24. 2006.

According to this order the lawful spouse's embryo has been transferring to applicant woman's womb due to the concluded contract and court's authorization. According to this contract child isn't given back to gamete owners. Embryo recipients will take care of the newly – born after birth, and they are considered as parents.

6- Conclusion

1. As artificial insemination progresses is one of the recent matters. So, there isn't any jurisprudence and law background in Islam and Iran, especially in civil law for it.
2. Spouses own sperm and ovum insemination permission is possible in any way, provided that religiously prohibited preparations are avoided.
3. In any case the child which is born in this way, is attributed to sperm and ovum owners and possess all the civil rights.
4. Although there are different opinions about the donor gamete interference, but because the great status of leadership in Iran believes in absolute permission so, it is permitted.
5. According to the constitution law in Iran artificial insemination is permitted and it is not a crime, in criminal law, and there is no law for supervision of this act.

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