



The inheritance position of the frozen embryo in legal system of Iran

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ABSTRACT

In this century with medical advancements and possibility to treat infertility by medical methods many question in different scopes ‘ for example law ‘ have been submitted which should be answered by scientists to prepare the suitable ground for making necessary rules in this matter .One of these subjects which is submitted in law is the inheritance position of the frozen embryo and the inheritability of the children whose fertilization has taken place after the death of owner of the sperm/ovum and whether ,specific share of inheritance should be saved for them or not? And if the answer to this question is positive how long is its period of time?in this article ,these questions will be answered by relying on law , religious jurisprudence and also the idea of lawyers and religious theorizer. So according to that basis the following conclusions arise:

1-The genealogic relation is just between the children and the owner of sperm and ovum even if there was no marriage relationship between them and clearly inheritance is a result of genealogy.

2-The child whose fertilization has taken place after death of parents also inherits from owner of sperm or ovum’. Because in this situation genealogy (mediocre relationship) does potentially exist.

3-The embryo that is composed and fertilized out of the uterus can be supported by civil law. whether it is growing up or it has been frozen, because the frozen embryo is a potential human being, in addition the generality of Iran civil law include this group, too.As well,as Freezing embryo, after death or separation from of the parents, causes some problems,the legislators should find a solution to prevent these challenges but it is not a good reason to deprive these children of their right of inheritance.

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Introduction

Nowadays using the advanced medical methods in giving birth, cause some legal problems which has never taken place before . The most important subjects in this scope are:

1-The inheritance status of the children whose fertilization has taken place after the death of owner of sperm or ovum.

2-The inheritance status of the frozen embryo and whether we should deposit and save a specific share of inheritance for this person, like the natural gender (which is mother’s uterus)or not? if the answer is positive what is its time limit?

Author is going to answer these questions according to religious and lawyer’s opinion.

So the content of this article is divided into two sections:

A- the inheritance status of the gender whose fertilization has taken place after death of parents.

B- the inheritance status of frozen embryo (gender)

A: the inheritance status of gender whose fertilization has taken place after death of parents:

It is clear that one of the main inheritance ways is the blood relationship (mediocre relationship) between the child and parent’s , which cause the inheritability , legislator have treated the gender (carry baby) like a real human being , who is growing up , so he or she is entitled to have civil rights(1) one of these rights is inheritance which has been stated in article 875 of Iran civil law , it provided that : gender (carry baby) will inherit if fertilization has taken place before parent’s death and if

the was child born alive, even if the parent dies immediately after birth .

By paying attention to the article above, undoubtedly if the fertilization takes place before death of inheritate, relationships still exist. (2)

For relating children to their parents the sexual relationship is not necessary. In this view, only, the child who is born as a result of adultery is deprived from inheritance, therefore if sperm and ovum of strangers are composed and fertilized in a laboratory (with their knowledge) which is called [artificial insemination], the baby who will be born will not be illegitimate and therefore, he or she can inherit from the owners of sperm and ovum;as the criterion to proof mediocre relationship,which is: fertilization and birth from the zygote made from specific sperm and ovum,has been met.

Imam Hassan (peace be upon him) stated that : ((in sexual relationship between a married woman and a virgin girl if a baby is born in this position, the baby is related to the owner of sperm (husband of the woman who has given birth to that baby)). (3) Now the question is that if the zygote has been made and fertilized after the death of owner of sperm and ovum, whether this gender (baby) can inherit from parents (owner of sperm and ovum)or not?

In other words is it necessary that fertilization takes place before parent’s death or not?

Here are two ideas about this question

First idea :

Some religious jurisprudence argue that:¹(4)

This clause and criterion is not necessary, but it has been applied to prove mediocre relationship between the baby and the parent's; therefore, the relationship between a child and a dead person is enough to prove inheritance, even though its fertilization had taken place after death of the parent. In other words, because there is no reason for necessity of simultaneity between being someone's child and death of sperm's owner, if the fertilization has been proved after parent's death it is enough for inheritance. Some authors also believe that if the sperm enters into vagina it is enough to prove inheritance so they say that if a man dies immediately after having sex with his wife (after intercourse), the child who will be born will belong to them and can inherit, despite the fact that he died before fertilization takes place (5).

In confirming this idea we can say that with paying attention to minimum time for fertilization which is 24-28 hours after intercourse, it is clear that if the parent dies after intercourse in this 24-28 hours (before fertilization), the baby will undoubtedly belong to the parent (owner of sperm and ovum). And we can not deprive the child of inheritance. Therefore it seems that legislator's goal by putting this condition: fertilization as long as 10 months (in article 875 civil law) is that: "for inheritance, the child should have blood and genetic relationship with dead person", so the clause "existence of zygote or fertilization" in this article is because of legislator's negligence and it does not reflect its real meaning. Specially by paying attention to the ratification time when medical science had not improved as much as nowadays and legislators could not understand the new methods of pregnancy. However in this century with medical advancement we are able to understand these conditions. Also in article 1159 and 1158 legislator it is provided that: "the child who is born between 6-10 month after intercourse belongs to the husband", in fact the legislator in these articles assumes that fertilization is exactly simultaneous with intercourse, so the child whose fertilization does not take place at the same time as the intercourse will also belong to the husband and inherit from him. In this interpretation we can say that not only there is no conflict between article 878 and 1158-1159 but also they are completely accorded.

Some lawyers accept this opinion. (6) They believe that when the artificial insemination takes place after death of sperm's owner, by intellectual analysis and natural philosophy and compassion, we can say that this gender also inherits, with reference to article 957 by reasoning that: "alive birth causes possession of his or her share of inheritance." Because the final goal is that: fertilization takes place of that parent's sperm or ovum. But other lawyers (7) believe that: legislator in article 875 explains the natural and common sexual relationship between husband and wife not artificial insemination and because of that it is assumed that the time of fertilization is the same as intercourse time. So if the judiciary believe this as a just and fair conclusion and verdict that: "this legitimate and appropriate child should inherit too," it is obviously according to the legislator's goal. That is why the legislator in article 1159, with negligence, has provided that: "the baby who is born 10 months after death of the husband belongs to the husband." It shows the

legislator's tendency for giving inheritance right to this group of children as much as possible.

Although it is a just and pursuant opinion, there is an objection to it, that is: it is against article 1158, 1159, because in these articles the criterion test for inheritance is "birth of the child 10 months prior to the death of the sperm owner. So with this criterion the baby who is born from artificial insemination a long time after death of sperm or ovum's owner can not inherit. But in this century with possibility of keeping a gender bank ((the place where with medical equipment keep gender)) for a long time it is not fair to say that: just if this baby was born along 10 months after husband death, the baby can inherit and otherwise he/she cannot. In addition as the legislator did not use this in the article it seems that this kind of explanation is self-opinion and by noting that the legislator in these articles has just emphasized the possibility of relationship between the gender and owner of sperm, so undoubtedly the child whose fertilization has been taken place long time after death of the parents, can inherit because the criteria is: ((possibility to relate)) which exists in these cases, too. One of the main arguments against that opinion is (8): although this idea is fair it is against express state of article 875, and therefore, acknowledging the inheritance right, for these children, is not, lawful.

As stated before, logic and justice demand that instead of paying attention to appearance of the article, more attention should be paid to the condition of that time and the purpose of law and these group of children should not be deprived from their inheritance right.

Second point of view:

In this view the inheritor's fertilization should take place before death of parents (owner of sperm or ovum) because most proofs and reasons about inheritance section like; verse 11 and 12 of nesa unit(1) show necessity of concurrency between fertilizing and death of sperm's owner in these verses to show that the dead person has a child, past tense has been used. So using this tense here (in this unit and article) shows that the child should exist before death of parents. This group of experts believe that past tense in these verses is important and there is no reason to show the past tense in verses is due to negligence. Therefore in this view gender's inheritance resources just prove inheritance for "carry" "gender" which means the fertilization should take place before death and no inheritance resource provides inheritance for fertilization after death of sperm's owner (9). The objection of this opinion is that: These proofs and resources are just about the natural gender (intercourse) not artificial insemination and if paying attention to that in the past nobody could not prove pregnancy in short time after intercourse so gender whose fertilization took place after death belongs to him because at that time it was impossible to recognize that fertilization had taken place at least not during the first hours or days after intercourse.

Selected view point:

It seems that the first argument is more powerful and reasonable so when genetic relationship is certain, this child can inherit for dead person even though it is fertilization had taken place by new medical ways even after death of sperm's owner because generality of verses (*) conclude this condition too. In addition, as stated before we should not rely on appearance of article 875, because at the time this legislation was passed these new medical advancements did not exist. So, is it fair to, by literal interpretation of this article deprive the child whose

¹ Jurisprudence, in this position recommends the compromise between inheritors (rezania, moalem, 1384, p477)

fertilization has been taken place , only a few minutes , after death of sperm or ovum's owner , of their appropriate right ?!!

Frozen embryo's inheritance

Since nowadays there is a possibility of freezing the genders with new equipment and keeping them for a long time, in gender bank, do they inherit or not? And if they inherit, for how long we should save their share of inheritance?

To answer these questions, some experts detached two different conditions, first: the condition where the interruption between freezing the fertilization and transfer to uterus is very short i.e. the pregnancy is less than maximum time(10month)which has been stated before in article 1158-1159.

Second: the condition where the interruption is longer than 10 months. These experts believe that in the first condition gender inherit if sperm's owner had died after transferring the gender to uterus but in second condition gender inherit if gender grow up without break whether in uterus or out of it even if sperm's owner died before the transfer so if gender becomes frozen after fertilization and its growing suspends it will not count as a "carry gender" and therefore can not inherit (10) The objection is that this group of experts believe that in the first condition, the possibility of inheritance depends on death of parents occurring after the transfer to uterus but in the other condition it is not necessary and it is not in accordance with the law , By paying attention to the fact that with rapid medical advancements a gender might be kept in laboratory until it's birth time and there will not be any need for transferring it to uterus , we can come to this conclusion that this criterion is useless.

Other experts (11) believe that ev the law gives civil right to carry gender (a fertilized gender in uterus) and this expression is not for gender out of uterus according to legislator's goal we can find out that the legislator's main goal is: acknowledging this fertilized gender as a competent human being , (whether inside the uterus or out of it) .

And the expression " carry gender " or carry baby is related to normal and natural position so the baby who is growing out of the uterus has the same civil right and is a real gender Some other experts (12) believe that even though in medical custom, the term " carry baby " incorporates the gender who has been fertilized out of uterus but it is not enough to give them civil and religious right.

Selected opinion:

As some experts believe that fertilized ovum is a gender as soon as fertilization takes place, the "carried baby" is not main issue. And it is necessary which is accorded too many statements of Imams (1) about feticide but undoubtedly legislator should prohibit freezing the gender after divorce to prevent probable problems.²

For laboratory gender "birth alive" means: its independent life out of the laboratory and at that time he or she has been born and its unstable right will be established.

Conclusion

By all stated above the conclusion is:

1-Mediocre relationship is just between a child and owner of ovum and sperm even though they did not have sexual relationship and of course they inherit because inheritance arises of mediocre (genetic) relationship

2-The child for whom fertilization has taken place after parent's death; also inherit from owners of sperm and ovum because there is possibility of mediocre relationship.

3-Gender for which fertilization has taken place out of uterus can have civil right whether it is growing up or it has been frozen, because it is still a competent human being, but

4-if freezing the gender happens after parent's divorce or death it may cause some problems so legislators should find a way to prevent these problems.

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